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REASON

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January 1998

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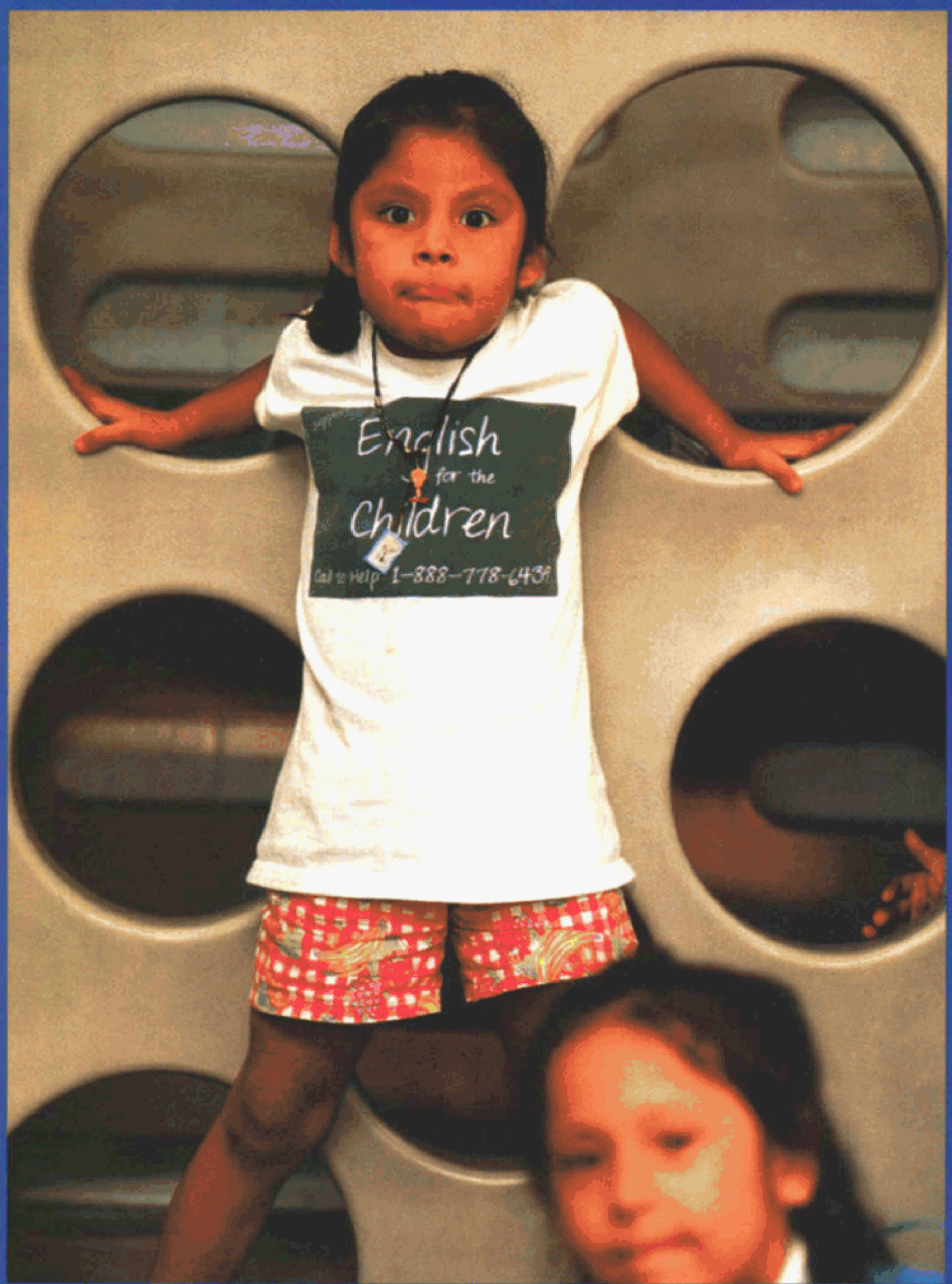

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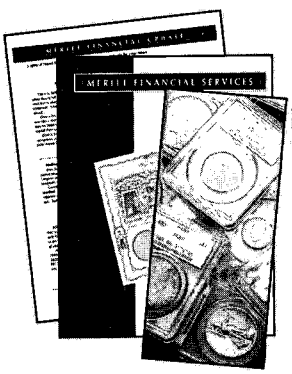

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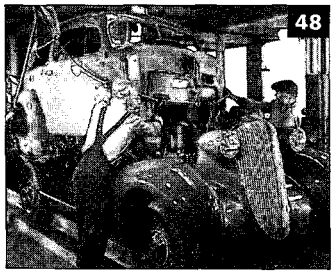

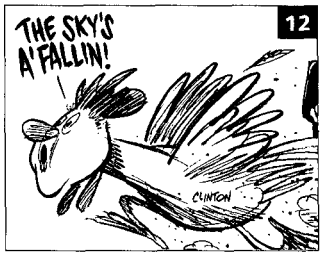

Editorials

4 Creative Insecurity by Virginia I. Postrel
The complicated truth behind the rise of Microsoft.

6 The Kids Are All Right by Nick Gillespie
Clinton's child care initiative is a solution in search of a problem.

Features

18 Loco, Completamente Loco by Glenn Garvin
The many failures of "bilingual education."

30 Shaky Recovery by Michael J. Oakes
Three years after the Kobe earthquake, Japan's local planners offer little relief.

36 Stoned in Santa Barbara by Brian Doherty
A family-owned quarry business is no match for determined bureaucrats.

Books

44 The Quest for the Holy Rail by Steven Hayward
Asphalt Nation: How the Automobile Took Over America and How We Can Take it Back, by Jane Holtz Kay

The City After the Automobile, by Moshe Safdie with Wendy Kohn

46 Masters of the Universe by Kenneth Silber
Visions: How Science Will Revolutionize the 21st Century, by Michio Kaku

48 The Man with the Plan by Brink Lindsey
The One Best Way: Frederick Winslow Taylor and the Enigma of Efficiency, by Robert Kanigel

54 Organizing Principals by Richard C. Seder
The Teacher Unions: How the NEA and the AFT Sabotage Reform and Hold Parents, Students, Teachers, and Taxpayers Hostage to Bureaucracy, by Myron Lieberman

Departments

8 Letters
Smoked out; frying spam; women at work; Drum *beat.*

12 Citings
Marriage penalties, cruise controls, cheesy political speech, election returns...
- *Artifact: "Che" chic.*
- *Soundbite:* Wired*'s Jon Katz, defending the new media.*
- *Brickbats: Hooked on Certs, veiled threats, bullish impersonations...*

42 Reasonable Doubts: Their Own Petard by Walter Olson
Both sides can play the "better living through litigation" game.

58 Selected Skirmishes: Peking Duck by Thomas W. Hazlett
Selling out—constructively.

Cover photo: Jonathan Nourok

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Creative Insecurity

The complicated truth behind the rise of Microsoft

By Virginia I. Postrel

Back in 1983, *Forbes* ran an article called "If they're so smart, why aren't they rich?" It was about how inventors rarely reap big financial rewards from their creations, and it started like this:

"Here are some names you are not likely ever to see in The Forbes Four Hundred [list of the richest Americans]: Franklin Lim. Gary Kildall. Bill Gates...."

Oops.

The world's richest man wasn't always so. During the last round of high-tech excitement—the personal-computer boom of the early 1980s (which was followed by a traumatic shakeout)—Gates looked like a smart programming geek whose business savvy was dwarfed by the marketing whizzes at Apple: "Their Apple Corp.," wrote the anonymous *Forbes* author, "has been among the most successful at packaging a product that sells and then selling it at an attractive price."

Therein lies a tale. As the Justice Department and a half-dozen state attorneys general push forward antitrust actions against Microsoft, it's worth considering how the company got where it is and what that suggests about the strengths and limitations of markets.

There are two main fables told about Microsoft: It has become the dominant, standard-setting software company, and made Gates a multibillionaire, because a) it makes wonderful products and expresses all that is good about a capitalist system or b) it cheats. Both fables turn up especially strongly in statements by people who lack deep knowledge of the industry, and each serves the interests of an industry faction.

The truth, however, is more complicated. Considered without regard to price, ubiquity, or compatibility with inexpensive hardware, many Microsoft products are mediocre at best. I am happily writing this article using an obsolete Macintosh operating system and WordPerfect, both of which I find superior to even the latest versions of Windows and Word. Great products did not make Microsoft number one. Good-enough products did.

That uncomfortable truth offends moralists on both sides of the Microsoft debate. The company's fans (and its spin doctors) want to tell a simple tale about virtue triumphant—with virtue defined, *Atlas Shrugged*–style, not only as astute business decision making and fierce competition but also as engineering excellence. Its critics use the same definition. If the products are less than great, they suggest, the only way to explain the company's success is through some sort of sleaze. Or, alternatively, through the innate flaws of the market.

So what really happened? How did Microsoft end up ruling PC operating systems and, through them, software in general?

At the risk of simplifying a complex story (if only by reducing it to two players), the bottom line is this: Apple acted—and continues to act—like a smug, self-righteous monopolist. Microsoft acted—and continues to act—like a scrambling, sometimes vicious competitor.

That pattern shows up most clearly in pricing strategies. Microsoft's approach, throughout its history, has been to charge low prices and sell an enormous amount of software. True to form, the company is currently in trouble with the Justice Department for charging too little—nothing—for its Internet Explorer, by including it in Windows. (The technical legal dispute is over whether Explorer is a "feature" of Windows, as Microsoft maintains, or a separate product that is an illegal "tie-in" and thus violates a consent decree Microsoft signed in 1995.)

The low-price strategy makes sense on two levels: First, it approximates marginal-cost pricing, since software, once written, costs very little for each additional copy. Anything above that incremental cost, however small, is profit. Second, and more significantly in this case, lower prices mean more customers. And the more people who use a particular kind of software, the more desirable it is for others to use it too. Although translators help, switching formats is messy and inconvenient. This "network externality" is particularly important for operating systems and Internet browser formats, since software developers and Web site designers have to pick a standard for which to optimize their products.

As Gates told *Wall Street Journal* reporter Jim Carlton in an interview for Carlton's new book *Apple: The Inside Story of Intrigue, Egomania, and Business Blunders*, "Momentum creates momentum. If you have volume, then people write apps. If people write apps, you have momentum."

But if you think you already have a monopoly, you don't worry about momentum. While Apple executives theoretically knew they had competition, they acted as though they didn't. Back in 1983 Apple may have been "selling [its computers] at an attractive price." But the coming of the IBM clones made Apple's prices look downright hideous. In the face of ever-stronger competition, the company insisted on pricing the Macintosh to maintain at least 50 percent profit margins; its "50-50-50 rule" told managers to keep margins up to maintain the stock price.

Customers who paid their own personal money for Macs might be able to justify the high price simply because the computers were fun and easy to use. But business managers who paid Apple prices for any but the most specialized applications, notably graphics-intensive work, were either fiscally irresponsible or just plain dumb. Apple's pricing strategy handed the vast business market to computers running Microsoft operating systems, first DOS, then Windows.

Microsoft, of course, doesn't sell computers. It's in the software business. You can get its operating system (and run its applications) on all sorts of different ma-

chines, whose manufacturers compete intensely. That competition drives down consumer costs, even as machine features get better all the time.

Apple didn't want that sort of competition. It not only kept its own prices high but refused to license its software to any other computer maker. That meant even fewer people used its operating system, which further dampened its momentum. Apple, in fact, acted like the ultimate "tie-in" monopolist. You not only couldn't buy parts of its software separately; you couldn't buy them at all without forking over thousands for an Apple-made machine. And Apple has never been particularly good at manufacturing.

After the company tepidly began licensing a couple of years ago, Mac clone makers did what Apple had feared: They cut into its revenue. But they also expanded the market, and they made the fastest computers ever to carry the Mac operating system. They gave Apple money for its software, even as they bore the costs of manufacturing and distributing their machines. And they gave consumers more choice, more alternatives to Windows. If I were an antitrust regulator looking for conspiracies, I'd be wondering just how coincidental it was that Microsoft invested $150 million in Apple just about the time Steve Jobs announced that the company was ending the clone program.

Such explanations aren't necessary, however. Apple screwed Mac lovers all by itself. Far from the marketing whizzes of 1983 conventional wisdom, its executives were enamored with the cult of the machine, too hung up on the beauty of their product to understand that consumers actually cared about many other things: price, plenty of software, and compatibility with other systems. Quality is not one-dimensional.

Apple's arrogance left computer users with less choice than they might have had—or, perhaps, with more. After all, if Apple had slashed prices early on and taken the business market seriously from the start, it could well have ended up in a Microsoft-like position, but without having to share its market with clones. Microsoft would then have been mostly an applications company, selling Excel and Word to Mac users, and we'd be hearing about the evil, anticompetitive actions of Steve Jobs.

That seems unlikely, however, and the reason is revealing. Apple's all-in-one-box strategy was inherently brittle. It offered too many margins of error and too few margins of adjustment.

The same company wrote the software and made the machines. So if the computers caught on fire, as they sometimes did, or the manufacturing plants couldn't keep up with Christmas demand, there was no alternative outlet for the Mac operating system. Software sales dropped too. No competitive sales force could go after business users while Jobs and company were chasing public schools. All new ideas had to come from within the same closed system. (For a discussion of related issues, see my *Forbes ASAP* article "Resilience vs. Anticipation," available at www.reason.com/opeds/vpasap082597.html. While Apple is based in Silicon Valley, its self-sufficiency strategy more closely resembles those of the minicomputer companies based around Boston.)

Microsoft's partner-dependent system proved far more resilient as the industry changed. The company didn't have to do everything itself, and it could reap the benefits of innovations by others, whether in manufacturing, assembly, distribution, or applications software. Instead of the best minds of a single company, it enlisted the best minds of hundreds. And while Microsoft depended on its partners to build the market, in time they came to depend on Microsoft. The irony is that by making alliances and competing furiously—by *not* acting like a monopolist—Microsoft wound up reaping the benefits of a near-monopoly on its operating system.

It is emphatically not true that "when you buy a computer, you already are without any choice as to the operating system," as Microsoft critic Audrie Krause said on *Crossfire*. Both REASON's production department and I personally will be buying new Macs in the next few months. Translation software makes it relatively easy to go from one operating system to another. Nowadays, it's possible to function reasonably well with an operating system that controls only 5 percent of the new-computer market.

The great fear of Microsoft's critics is that the company will wind up controlling everything, foisting mediocre-to-poor products on an unwilling public at ever-higher prices. It's impossible to disprove that hypothetical scenario. But history, and Microsoft's own intense paranoia, cast doubt on it. Just when its quasi-monopoly looks secure, something new—Netscape's Web browsers, Sun Microsystems' Java programming language—pops up and makes Microsoft scramble to maintain its position. So far its resilience has served it well, but the critics' scary scenario relies on more than successful scrambling. It requires absolute security, no future challengers. And that looks unlikely.

Consider the smoking gun memo cited by Assistant Attorney General Joel Klein at the press conference announcing the Justice Department suit. An internal Microsoft document, it told marketing managers to "Worry about the browser share as much as Bill Gates does, because we will lose the Internet platform battle if we do not have a significant user-installed base. The industry would simply ignore our standards. At your level, that is at the manager level, if you let customers deploy Netscape Navigator, you lose the leadership on the desktop."

I will leave it to the attorneys to divine what it means

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REASON

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not to "let customers deploy Netscape Navigator," but one thing is clear: This is not a company that thinks like a monopoly. It is always running scared. There's always the possibility that something new could come along and destroy its franchise.

Microsoft didn't get where it is by creating perfect products. It benefited as much from its competitors' mistakes as from its own considerable acumen. And it isn't shy about leaning on suppliers and intermediate customers, such as computer makers, to get its way. In the eyes of its critics, its success is therefore proof that something is amiss in the marketplace.

But the market doesn't promise perfection, only a trial-and-error process of discovery and improvement. The fallible human beings who create products make mistakes. They let their egos and preconceptions blind them to what people really want. Or they just don't know enough, or adjust fast enough, to produce the right goods at the right time. That some of Microsoft's strongest current competitors—Sun and Oracle—are gripped by an anti-PC ideology, when customers love the independence and flexibility of personal computers, does not bode well for them.

What is striking about the story of Microsoft is how adaptable the company has been. Gates's original vision of "a computer on every desk and in every home, running Microsoft software" didn't specify what sort of software or who would make the computers. It was an open-ended, flexible idea that built a resilient company.

What Microsoft has delivered is pretty much what most people want: a way to use computers easily, for many different purposes. Its software isn't always elegant, but that's the criterion of programming elites, not everyday users. And though Microsoft is clearly the big kid on the block, it has enabled, and encouraged, lots of other software developers. Microsoft accounts for a mere 4 percent of industry revenue. As Eamonn Sullivan of *PC Week* notes, "A lot of companies are making a lot of money on the ubiquity of Windows, providing users with a lot of choice where they want it—on their desktops. That isn't the expected result of a monopoly."

From 1969 to 1982, the Justice Department carried on a similar trust-busting crusade against IBM, which had behaved in many ways just like Microsoft. (An earlier antitrust action against IBM had been settled by a consent decree in 1956.) Millions of dollars were transferred from the taxpayers and stockholders to lawyers and expert witnesses. Enormous amounts of brain power were dissipated. Having to monitor every action for possible legal ramifications further constipated IBM's already-centralized culture.

The suit was a complete waste. Whatever quasi-monopoly IBM had was broken not by government enforcers but by obscure innovators, working on computer visions neither IBM nor the Justice Department's legions of lawyers had imagined. Big Blue is still big, though it's smaller than it once was. But nobody thinks it could control the world. The world, it seems, is beyond that sort of control.

The Kids Are All Right

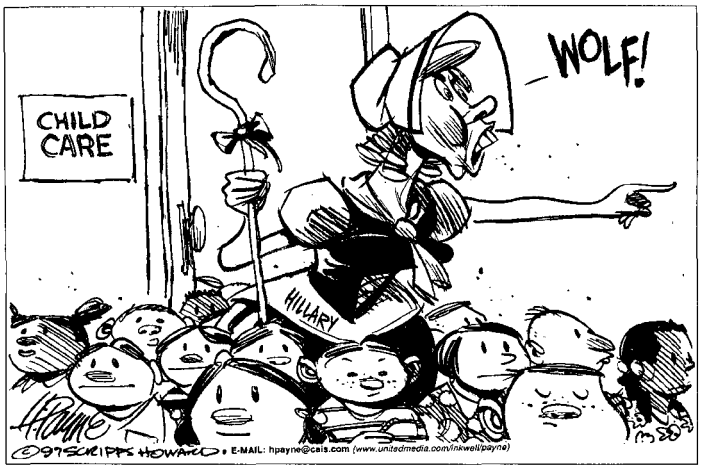
The White House invents a child care crisis.

By Nick Gillespie

The recent White House Conference on Child Care used very high-tech means—satellite links to more than 100 sites outside the capital—to engage in a very traditional political practice: kissing babies, literally and figuratively. Like its May predecessor, the White House Conference on Early Childhood Development, the event blended apocalyptic rhetoric with vague policy proposals designed to whet the public's appetite for more-aggressive action sometime in the future. Like that earlier meeting, however, the confab seems unlikely to produce anything other than a few fleeting photo ops. That's because the Clinton administration's take on day care is simply too far removed from the actual, lived reality of its target au-

dience: the parents of the roughly 13 million American children now in child care.

To be sure, conference participants worked the crowd. Hillary Clinton (who organized the event) said day care "has a tremendous bearing not just on individual lives but on the future of our nation" and bemoaned the "dismal" quality of much day care and the "abysmal" pay for workers. Health and Human Services Secretary Donna Shalala articulated the questions that presumably anxious, uninformed parents must confront about day care: "Can I find it? Can I afford it? And can I trust it?"



"We're here to examine where we are and what we still have to do," explained President Clinton. "And what we still have to do is quite a lot." He outlined a series of oddly unambitious proposals (given his assertion that child care is "the single most important question about social policy today"): diverting Americorps volunteers into working with kids (presumably for little or no pay); creating a national registry that will make it easier for parents to do background checks on providers; spending $300 million over five years to boost pay and training of day care workers; and "encouraging" businesses to offer more child care services. He also promised to revisit the topic in greater detail in January's State of the Union Address.

Despite the flurry of dutiful, largely obeisant press coverage, it is hardly news when politicians surround themselves with children and bravely pledge, as did the first lady, to "make it clear that we want American parents to succeed at the most important task they have, caring for the next generation." The real scoop is that the vast majority of parents are careful consumers of child care, are satisfied with their arrangements, and are likely to view increased government involvement or oversight with great skepticism.

Although this reality doesn't pack the front-page punch of the Clinton administration's—and the child care lobby's—horror story, it is slowly filtering into mainstream media, partly as a response to the White House conference. For instance, recent columns in two major newspapers, *The Wall Street Journal* and the *Los Angeles Times*, celebrated "family child care," in which a provider operates out of her house (a form often maligned by lobbyists for more federal involvement in child care). In recounting the support, direction, and care given her son by his longtime day care provider, the *Journal*'s Sue Shellenbarger concluded, "When the front door of [my provider's] modest home swings shut for the last time behind my son, she will have sent into the world...a child permanently enriched, and parents better equipped, for the challenges they face." Writing in the *Times*, Martha Groves highlights the flexibility and economy of her situation: "The cost, [my provider] told me, would be $100 weekly (a bargain that included lunch). And because I was paying $10 a week more than other families, I could show up in the evening as late as needed ...[her] Family Child Care was always open. And I mean always."

More systematic studies support these positive anecdotal impressions for all types of child care. A report on child care for low-income families by the National Research Council notes, "Virtually all parents who use child care indicate that they are satisfied with their current child care arrangements. Even among low-income families, about 95 percent of those using care for children under age 5 say they are satisfied or highly satisfied." Comprehensive studies such as *The Profile of Child Care Settings*, sponsored by the Department of Education, and *The National Child Care Survey*, partly funded by the Department of Health and Human Services, confirm that the public- and private-sector supply of child care has responded to a doubling in demand over the past 25 years and that "quality" remains parents' main criterion in evaluating care. Economic analyses have found that, when adjusted for inflation, day care costs have remained constant over the past two decades.

Such findings strongly suggest that parents may have already asked—and answered—Shalala's questions about day care: "Can I find it? Can I afford it? And can I trust it?" Such findings also suggest that parents (let alone other taxpayers) will wonder how injecting federal money—either directly as pay raises or indirectly as training "scholarships" for workers—into the child care system will reduce costs. Or how increasing governmental oversight, especially in the subjective area of "quality," will lead to a more consumer-oriented industry.

While the Clinton administration has scored points in the past with such "child-friendly" policies as the V-chip and the Communications Decency Act, those were largely symbolic gestures that echoed (however ham-handedly) established parental roles. With child care, it's a different matter. The proposed actions—and the promise of more elaborate interventions on the horizon—discount parents' experience and their tacit knowledge of what is best for their children. It's highly unlikely that the same parents who cite quality as their first concern in child care will sign on to plans that will limit their input into their children's upbringing. ◆

HENRY PAYNE

REASON NEWS

■ We're delighted to welcome two new contributing editors: U.C.-Irvine astrophysicist and science fiction author Gregory Benford, who wrote the November cover story on global warming; and Center for Equal Opportunity Vice President John J. Miller, whose book on Americanization is due out in May.

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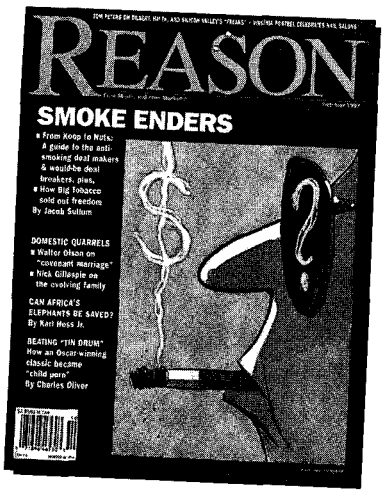

Smoked Out

I was delighted by Jacob Sullum's companion articles on the anti-smoking movement, "Let's Make a Deal?" and "Dealers' Choice" (October). As someone who smokes an occasional cigarette with pleasure (once a month), I am frustrated to observe the tobacco debate being monopolized by professional victims and prohibitionists. These people cannot explain why social smokers like me—people who can take it or leave it—exist. But we are many.

Incidentally, in the "Family Filmgoer" column in *The Washington Post*, the latest movies are screened for sex, violence, and —you guessed it—cigarette smoking.

Neil Inglis
ninglis@imf.org

Frying Spam

As Michael Lynch noted in his article "Unlovely Spam" (October) on proposed bans of computer "spam"—mass unsolicited e-mail messages—spam is at root a pricing problem. But Lynch didn't go into depth on the reason why. Due to the strange structure of telephone network access charges, an imposition of the FCC, most Internet service providers do not charge users more to send a greater volume of mail. Economics takes over—any good that is free will be used without restraint—and spam is born. Correspondingly, spam would die if the ISPs changed their pricing policies, or if end users adopted Esther Dyson's solution: If a stranger wants to send you mail, your software will charge him.

This analysis identifies the root cause of spam and suggests a solution. But it does not justify a spam ban. Michael Lynch says, "It is unacceptable for any party...to force anyone else to pay for something that he or she doesn't want." But are end users really being forced to pay for spam, when that spam is a foreseeable consequence of their contracts with ISPs under current pricing policies? I think the answer is no.

What about the argument that spam is trespass on one's e-mail box? The property rights approach is tempting. But accepting this argument really stretches our understanding of the rules that govern e-mail, such as they are. Property and contract rights need to be clear. The rules of cyberspace just aren't clear enough to call spam a violation. While the Internet originally wasn't used for commercial purposes, that's changed now.

I think ISPs have a strong trespass argument against spammers—*if* the ISP has notified the spammer he isn't welcome on its network. Maybe, just maybe, an individual e-mail user can make the same argument, if he's told a spammer to back off. But the default rules of e-mail do not clearly outlaw spam from the start. I don't think any libertarian would want an Internet where that which is not expressly allowed is assumed to be prohibited.

While property rights are essential to the resolution of conflicts in any space, "cyber" or not, the existence of a dispute doesn't mean that property or contract rights are being violated. Indeed, it might mean that clear property or contract rights have not been laid out. This seems to be the case with computer spam.

Solveig Singleton
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Women at Work

Nick Gillespie's otherwise enjoyable and informative review of three recent books on family and divorce ("Family Ways," October) contained numerous references to "working" and "nonworking" women. While I know Gillespie doesn't intend this, use of these terms perpetuates the myth that before wives moved into the paid workplace, they were not "working."

In fact, most stay-at-home moms were engaged in many hours a day of household production, from washing clothes and cooking meals to doing piecework for friends and neighbors. In the past 30 years, labor-saving devices and new food and service enterprises have supplanted the need for a full-time household production worker to support a family's needs, thus allowing the majority of women who want to work outside the home (most of whom apparently prefer part-time over full-time jobs, by the way) to do so economically.

This is not simply a semantic point. It makes clear how economic change and innovation can confer profound social benefits. It also helps to explain the findings of studies Gillespie quotes about the lack of maternal bonding differences between children in day care and children reared at home. Hard work, whether at home or outside of it, trades off with the ability to interact directly with a child.

My mother and countless other family members grew up in a time in which most moms worked hard at home. The children correspondingly had a great deal of free and essentially unsupervised time

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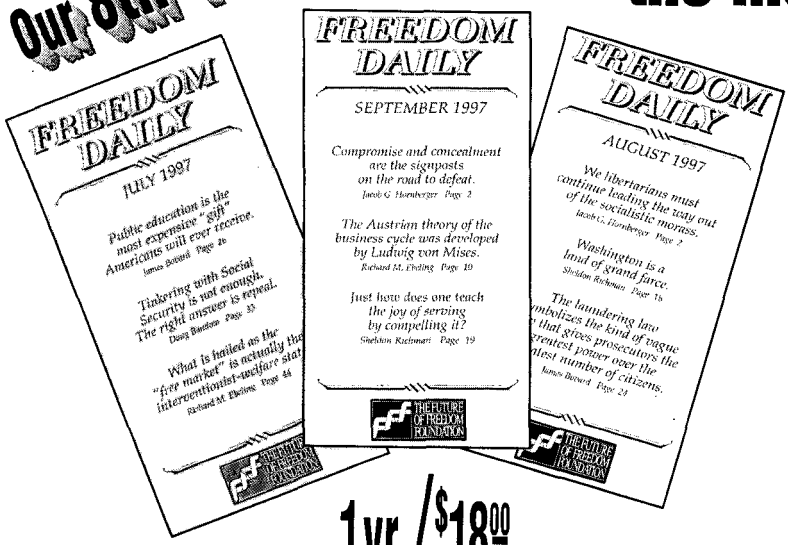
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(when they weren't doing chores themselves). The notion that stay-at-home moms earlier in the century were full-time caretakers of their children is a silly one and further obscures the issues surrounding work and family.

John Hood
Raleigh, NC

Drum Beat

Charles Oliver's column on the enforcement of Oklahoma's child pornography statute ("*The Tin Drum* Meets the Tin Badge," October) appropriately targets the First Amendment issues raised by this sordid affair. However, Oliver failed to cite the *Fourth* Amendment in discussing the Oklahoma City police's raids on citizens' homes and businesses.

The Fourth Amendment states that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." My dictionary defines *effects* simply as "movable goods"; thus it should not require a wild-eyed judicial activist to observe that "effects" surely include video cassettes.

Common sense should also suffice to reject the police contention that "we solicited the voluntary cooperation of the people in trying to abate future legal problems," a statement obviously made to give the illusion that the searches and seizures were consensual and that no warrants were necessary.

The homeowners, tenants, and business people abused by these local officials should not require the Video Privacy Act of 1988 to protect them from governmental madness. The Fourth Amendment has not been repealed, but it requires a modicum of courage and decency on the part of federal and state courts to enforce it vigorously. Supreme Court Justice Louis D. Brandeis stated in *Olmstead v. United States* that the Founding Fathers "conferred, as against the Government, the right to be let alone... the right most valued by civilized men."

Kenneth Kleiner
Staten Island, NY

Hit the Nail on the Head

Virginia Postrel's editorial "The Nail File" (October) was one of the most insightful I have read about the beauty industry, which almost prides itself on its smallness. As a small business in a small industry, I believe the balance weighs in favor of being overlooked by big government as opposed to being over-examined.

Obscurity does present financing, recruiting, and image challenges, so we may not always be the first choice of America's best and brightest. "Hidden" industries offset these challenges by the benefits of a free market economy that rewards entrepreneurial drive and risk taking.

The small industry is also threatened by the almost equally heavy hand of big business. The clout of a $25 billion business can wreak havoc on a $100 million

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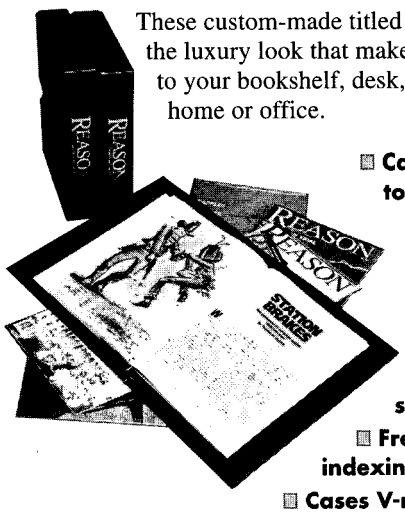

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business. A company the size of Bristol-Myers can buy its way into the beauty industry and leave a path of broken business in its wake before divesting itself of the industry. It happened with Dow, Syntex, and American Cynamide in the beauty industry.

The ignorance of big government can be bliss, and perhaps America wants to keep policy makers inside the Beltway and out of our business.

Kevin Linehan
Standard Beauty Supply Inc.
Omaha, NE

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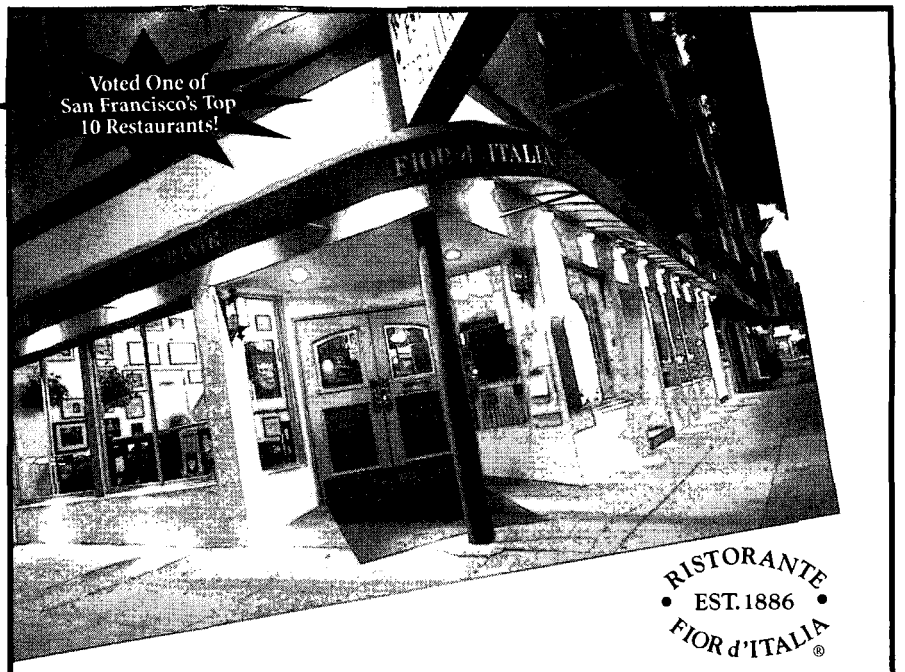

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If you are over 21, you can still **make a difference** by passing word of this contest to all the young people or parents you know. If you really like this positive way of teaching young people about the freedom philosophy, you can help by volunteering or contributing to the project. To find out how, write to Don L. Tiggre at **don-tiggre@utah-inter.net** or 1101 Main St., Suite #104-254, Evanston, WY 82930. Send 78 cent SASE for rules.

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Love and Taxes

By Michael W. Lynch

In Republican circles any issue that manages to combine family values with tax cuts is considered a winner. Concocting such a two-fer, Reps. Jerry Weller (R-Ill.) and David McIntosh (R-Ind.) and Sen. Lauch Faircloth (R-N.C.) have introduced bills to abolish the notorious marriage tax penalty, which they estimate costs 21 million American couples an average of $1,400 per year.

The Marriage Tax Elimination Act would allow married people to file as single taxpayers if doing so would reduce their tax liability. Today, for instance, the first $24,000 of a single filer's income is taxed at 15 percent, but a couple filing jointly starts paying the 28 percent rate when the household earns only $40,000. This bill would increase the 15 percent rate ceiling to $48,000 for married couples who file as individuals. The standard deduction, currently $6,700 for married couples, would increase for each to the $4,000 now allowed for individual filers.

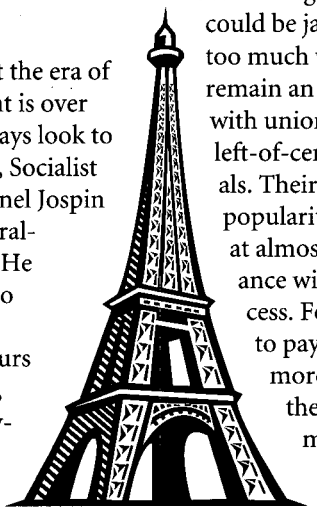
A husband and wife could individually account for all financial transactions that can be pegged to one spouse, such as earned income, investment income, IRA contributions, and alimony payments. Deductions that are not easily pegged to one person, such as child exemptions and the home mortgage interest deduction, would be proportionally assigned to each spouse depending on their respective shares of the household's income.

With 222 co-sponsors in the House and 37 co-sponsors in the Senate, hearings on these bills are expected to be held after Congress returns from its Christmas break. Perhaps at these hearings Congress could revisit all the marriage penalties it *added* through income thresholds in the 1997 tax bill. These income penalties include the deductibility of interest on student loans ($40,000 for singles and $60,000 for married couples), IRA expansions ($30,000 for singles and $50,000 for married couples), and even the child tax credit ($75,000 for singles and $110,000 for married couples).

Grand Mal

By Nick Gillespie

Those upset that the era of big government is over in America can always look to France. In October, Socialist Prime Minister Lionel Jospin dusted off this central-planning chestnut: He announced a plan to shorten the French workweek to 35 hours from its current 39, with workers receiving the same weekly pay. The plan is designed to take effect by 2000 and is intended to create jobs and lessen France's longstanding unemployment problems, which are among the worst in Western Europe.



Spread-the-work schemes have a long history (in Elizabethan England, laborers could be jailed for doing too much work) and remain an article of faith with union bosses and left-of-center intellectuals. Their enduring popularity, however, is at almost perfect variance with their success. Forcing firms to pay workers more than what they're worth may help some workers in the short run, notes Bryan Caplan, an economist at George Mason University. "But France's share-the-work law will make the prospects for long-term employment growth even more dismal than they already are. This law will be yet another reason why so few companies want to be employers in France."

Cruise Controls

By Rick Henderson

Norwegian Cruise Lines will take you from Miami to St. Kitts but not, say, from Seattle to San Francisco. That's because a century-old law prohibits foreign-owned passenger liners from traveling from one American city to another unless they pay a $200-per-passenger fine.

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Balance Sheet

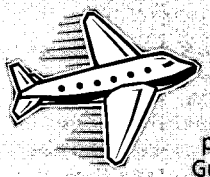
By Rick Henderson

ASSETS

▲ **Equality Time.** The U.S. Supreme Court lets the California Civil Rights Initiative go forward. By refusing to consider a challenge to Proposition 209, which bans race and gender preferences in government hiring and in admissions to state colleges and universities, the Court allows voters to consider similar bills and initiatives across the country.

▲ **Tainted Saint.** An icon of "good government" sanctimony—the Ralph Nader–founded Citizen Action—gets its comeuppance. The group closes its national office and sacks its staff after being linked to the Teamsters scandal. Three cronies of tainted union President Ron Carey tell a federal grand jury that the Teamsters gave money to Citizen Action which then illegally sent it to Carey's re-election campaign.

▲ **Pot Pass.** In the wake of successful medical marijuana campaigns in California and Arizona, the federal government finally approves new research. The National Institutes of Health sanction a study of marijuana as a treatment for AIDS wasting syndrome at San Francisco General Hospital.

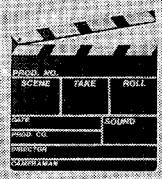


▲ **Flight Path.** Mexican airports prepare to go private. In 1998 the government plans to offer 50-year leases at 35 major airports, including the nation's largest passenger outlets in Mexico City, Cancun, Guadalajara, Monterrey, and Tijuana.

▼ **Geezer Grab.** Newt Gingrich threatens to delay genuine entitlement reform for years. The speaker suggests he'll appoint AARP head Horace Deets to a "Republican" seat on the new entitlement commission.

▼ **Critter Craze.** The Senate Environment and Public Works Committee approves reforms that would make a bad Endangered Species Act worse. The new ESA would not compensate individuals when the government seizes private property and converts it into habitat for endangered plants or animals. It would, however, give the Department of the Interior legal authority to arrest individuals when *they* "take" members of endangered or threatened species.

▼ **Blacklist Whitewash.** Four talent guilds apologize for establishing the Hollywood blacklist 50 years ago. The mainstream media portray the producers and writers who constituted the "Hollywood 10" as innocent victims who were punished for their idealism. Get a grip, folks. These people *were* Communist Party members who were unapologetic supporters of the Soviet Union while Stalin was sending artists and writers to death in the gulag.



▼ **Tattered Fabric.** The constitutional amendment to outlaw flag "desecration" just won't go away. In January the Senate will consider the amendment, which passed the House by a 310-to-114 vote last June. Forty-nine state legislatures have already formally asked Congress to "protect" the flag.

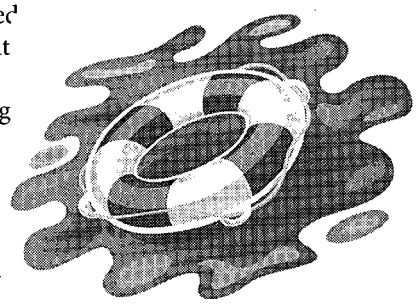
LIABILITIES

(Riverboats that operate along the Mississippi River are exempt from the law.)

Some members of Congress would like to change the 1886 Passenger Services Act, which was originally intended to keep Canadian shippers from dominating business along the Great Lakes. Sen. Strom Thurmond (R-S.C.) is the principal sponsor of the Cruise Tourism Act of 1997 (S. 803), which he believes would help Charleston compensate for jobs lost from the closing of the city's naval base. Elected officials from other port cities, led by San Francisco Mayor Willie Brown, along with businesses that benefit from tourism, have lined up behind the changes.

And for good reason: A study prepared for the California Department of Commerce suggests that U.S. port cities lose as much as $1 billion a year in business from potential cruise takers. Since 1980 the passenger cruise industry has expanded by nearly 8 percent a year, with even faster growth coming from the short two-to-three-day hops that would be ideal for trips between, say, Baltimore and New Orleans or Seattle and Anchorage.

Even though the last domestic ocean liner was built in 1951, maritime unions claim that relaxing the restrictions would stifle a revival of the domestic ocean liner industry. Unions are instead calling for Congress to directly subsidize potential builders of cruise ships, each of which costs around $350 million.



The Maritime Trades Department of the AFL-CIO has been strong-arming Democratic legislators who might otherwise be sympathetic to reforms. For instance, during Senate hearings, South Carolina's Fritz Hollings, a Charleston native, brazenly suggested to Thurmond's subcommittee that permitting foreign cruise liners to more easily service domestic ports would somehow compromise passenger safety.

The full Senate may consider the bill before the end of 1997.

Better Losers?

By Nick Gillespie

Though a longstanding tradition in Europe, a "loser pays" rule for civil lawsuits—in which the loser in a lawsuit pays the winner's court costs—has yet to catch on in the United States. But that may change soon. And if it does, the federal government, of all things, will be setting the pace—and in criminal, rather than civil, court.

House Judiciary Committee Chairman Henry Hyde (R-Ill.) recently tacked a loser-pays amendment to a $31 billion spending bill that covers Justice Department appropriations. Hyde's provision would force the feds to pay "reasonable" attorney's fees to acquitted defendants. Judges can deny the award if they believe the government ▶

BRICKBATS

♦If the kids at Weems Elementary School in Manassas, Virginia, don't have fresh breath, don't blame them. Blame the school's zero-tolerance policy on drugs. The school suspended 9-year-old Joey Hoeffer after they found him passing out Certs breath mints. The school's policy bans not only drugs but also any "look-alike" that a reasonable person would believe is a "controlled or illegal substance." School officials apparently think it's reasonable to think breath mints might be drugs. Says Joey's father, "He's not a breath-mint addict or anything like that."

♦And if kids in the New Caney Independent School District outside Houston aren't as religious as they used to be, don't blame them. The district bans "gang apparel" such as baggy pants, bandanas, and rosary beads. One area gang uses the beads as part of its colors, but Catholics who aren't gang members say that they are being discriminated against. School officials have never confiscated a gun or confirmed gang violence on school grounds in the rural district.

♦Ricardo Enamorado's jet ski stalled on Lake Michigan and he was hopelessly stranded—500 yards from shore. The Coast Guard rescued him two days later. "He was just sitting there, waiting for us to get to him," said a Coast Guard spokesman. Enamorado was suffering from dehydration. He apparently didn't know that Lake Michigan is freshwater.

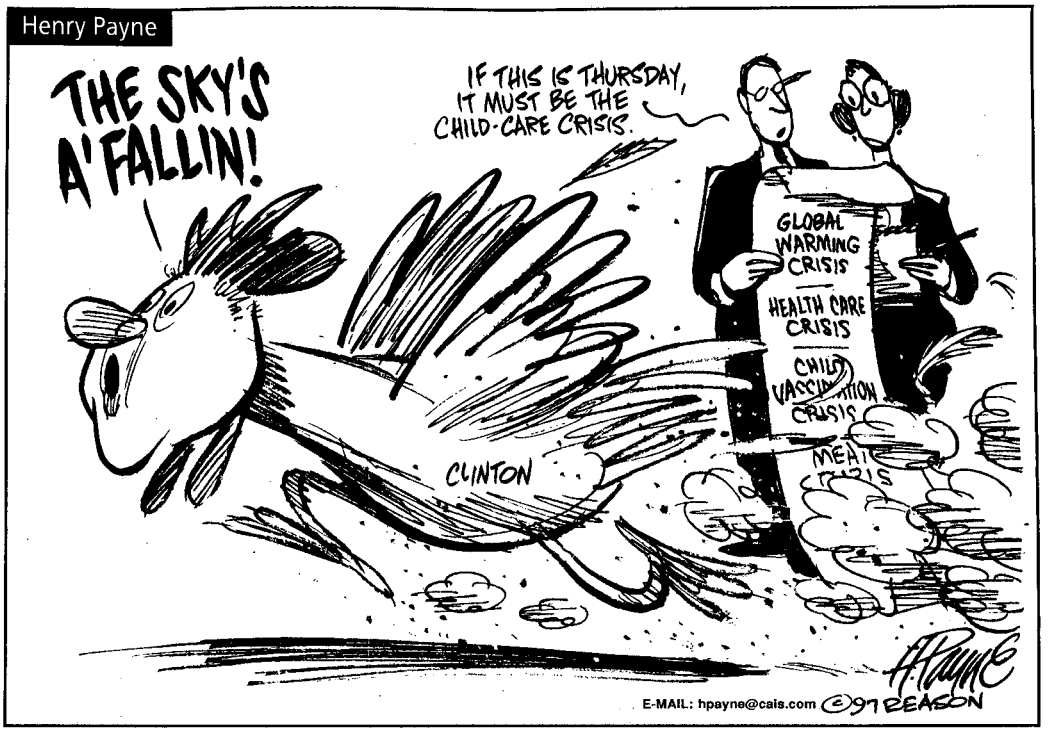
BRICKBATS

♦Alabama Gov. Fob James has weighed in on a thorny political issue: school prayer. The governor sent a 34-page letter to a federal judge who struck down the state's school prayer law. Fob says the Bill of Rights doesn't apply to the states. If a state wants prayer in schools, that's fine, he says. Presumably, if a state wants to ban newspapers and churches and take property without compensation, that's also OK.

♦Peter Rombold has a dream. He wants to run the first matador school in the United States. So far, he teaches a handful of people for free at his school near San Diego. But animal-rights activists are trying to shut Rombold down. Since bullfighting is illegal in the United States, Rombold doesn't actually use bulls in training—he just pretends *he's* a bull and charges at students. It seems to work. Three of his students have successfully tested their skills in Mexico. California state law also prohibits advertising or "promoting" bullfights. The activists say Rombold is breaking that law, and they are encouraging authorities to arrest him.

♦Saudi Arabia has banned the import and production of veils that don't cover a woman's face. Until now, women in that country were forced to wear a black cloak and head scarf in public but were allowed to show their faces. But on advice of the nation's leading theologian, the Saudis have adopted rules requiring women to cover their faces as well.

Henry Payne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was "substantially justified" in taking the case to court. The House of Representatives passed the amendment by a vote of 340 to 84. It was expected to be considered by a House-Senate committee sometime before the end of 1997; Attorney General Janet Reno has urged President Clinton to veto any version of it that comes before him.

Federal prosecutors take about 4,000 cases to trial each year, and a Congressional Budget Office report estimates that a loser-pays law would cost taxpayers as much as $7.5 million per year. Justice Department officials have warned that the real danger would lie in the feds' deciding not to take weak cases to court.

Which is, of course, an argument *for* a loser-pays system. As Hyde told the Knight-Ridder Tribune News Service, "This should serve as a deterrent to the Justice Department, which is made up of human beings, capable of error."

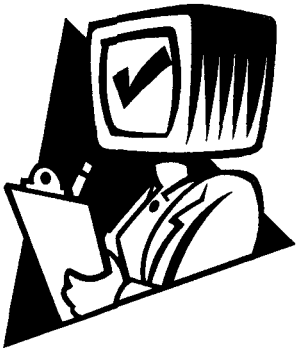
Private Parts

By Nick Gillespie

Conventional wisdom holds that computer geeks—especially *online* computer geeks—are crypto-libertarians who cherish the spontaneous order and voluntary associations of cyberspace. Findings from a recent poll conducted by Louis Harris Associates for Privacy & American Business, a nonprofit consumer research group, seem to bear out the stereotype. The survey asked questions of 1,009 computer users nationwide and tracked respondents according to Internet and online-service usage. When asked whether "government can generally be trusted to look after our interests," 64 percent disagreed strongly or somewhat. And in response to the statement, "If companies and industry associations adopt good voluntary privacy policies, that would be better than enacting government regulation in this country," 70 percent of all computer users agreed strongly or somewhat.

The same statement, however, garnered 75 percent agreement in 1995. And the response to a related question raises other questions about computer users' assumed libertarian ethos. When asked whether the government should "pass laws" regarding Internet privacy, recommend privacy standards, or let groups develop voluntary privacy standards, 65 percent of computer users who don't use the Internet voted for the first option. And while only 47 percent of Internet users endorsed government regulations, they still preferred them to government-recommended standards (30 percent) or voluntary, group-developed standards (21 percent).

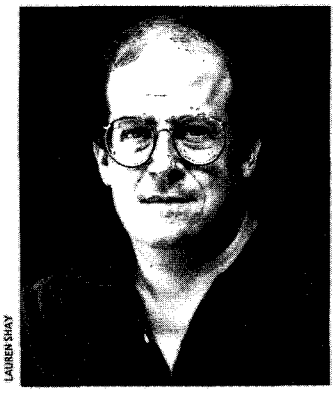
"The explanation for these apparently opposed viewpoints may be that respondents either do not yet see company and industry associations adopting good voluntary privacy policies or that they think the nature of the Internet requires a legal framework that government



would have to provide," write the pollsters, who also note that preference for government standards declines with the number of hours per week spent on the Internet.

SOUNDBITE

New-Media Personality



LAUREN SHAY

As a former executive producer of *CBS Morning News*, a one-time reporter for *The Washington Post* and *The Philadelphia Inquirer*, and a current contributing editor to *Wired* and featured columnist for its *Hotwired* Web site, Jon Katz has seen old and new journalism from the inside out. His recent books, *Virtuous Reality: How America Surrendered Discussion of Moral Values to Opportunists, Nitwits and Blockheads Like William Bennett* and *Media Rants: Postpolitics in the Digital Nation*, dissect what's wrong with mass media and what's going right with newer forms of expression. REASON Senior Editor Nick Gillespie talked with Katz via 19th-century technology—the telephone.

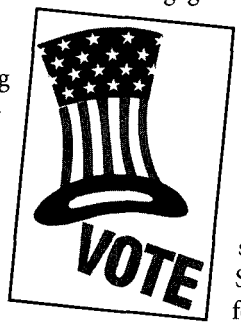
Q: You've said the 1990s are the "decade of the mediaphobe." Why is that?
A: New media—interactive, cable, the Web—are really sucking power away from entrenched institutions—[big] journalism, academe, government. I think it's a good thing, but people in those institutions don't. If you're in journalism or politics, there's a loss of power and that's very frightening. Journalism in particular approaches changes in technology and culture like they're dread viruses. That's why they talk about the Internet almost exclusively in terms of dangers and perversions. The excessive concern for the safety of children masks their fears about losing power. The Internet is actually an incredibly safe environment for children.
Q: What's so new about new media?
A: Some people involved in the Internet think they're reinventing the wheel. They're not. What we're seeing is a Czech Spring among people who have never had access to media before and can now speak. It's thrilling—and it's a return to the original, more-individualistic tradition of journalism dating back to the 18th century. We're seeing the end of phony journalistic objectivity on the Web. Objectivity never had a moral imperative to it; it was always a marketing technique. Increasingly, people are rejecting it in favor of media that does have a point of view.
Q: What about questions of accountability? Critics claim Web-based journalism has few or no standards.
A: I think there's a lot of good information on the Web; information has a way of being held accountable for itself. The issue with a Matt Drudge [the Web-based columnist who claimed a Clinton administration staffer was a wife beater and then apologized for the story] is whether he libeled someone irresponsibly. Matt Drudge was called very dramatically to account for what he wrote. In general, I think you're much *more* accountable on the Web because there's hundreds of thousands of people jumping down your throat if you're wrong. If I write a column that is stupid or factually incorrect, I'm held brutally accountable: Two thousand people jump down my throat in a minute.

Just Shut Up

By Michael W. Lynch

For a preview of how political speech might be regulated if Sens. John McCain (R-Ariz.) and Russ Feingold (D-Wisc.) got their campaign finance reform through Congress, one need look no further than Feingold's home state.

Wisconsin has long required political action committees and individual candidates to register with the Wisconsin State Elections Board (WSEB), which regulates their intake and outlays. Corporations, which are prohibited from spending in Wisconsin elections, and other groups are free under the Supreme Court's *Buckley v. Valeo* decision to engage in issue advocacy without registering with the WSEB. (See "Gagging on Political Reform," October 1996.)



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Prior to the 1996 election, at least three such groups—the Sierra Club, Americans for Limited Terms, and Wisconsin Manufacturers and Commerce—were running issue-oriented television and radio ads and direct mail campaigns. Feeling heat from the ads, first-time political candidates, incumbents up for re-election, and individual citizens filed complaints with the WSEB and sued the organizations in state court. State judges banned the ads, and the WSEB proceeded to look into whether the ads constituted express advocacy and thus fell inside the Wisconsin Elections Commission's regulatory reach.

Although the election board's attorney concluded that regulating the ads ▶

BRICKBATS

◆Ronald Daniel says he can't remember what happened the night Michele Clark broke his jaw. But she says he harassed her at a bar, following her into the ladies' room and grabbing her butt. She tried to leave, but he followed her again, cornering her in an alley and grabbing her breasts. So she kneed him in the groin and left. But he still followed her, catching her two blocks from the bar and grabbing her again. This time she knocked him to the sidewalk and kicked him several times. A jury believed her story but decided Clark should have walked away again after she had knocked him down, and that the kicks were aggravated assault. She now faces 20 years in prison.

—Charles Oliver

QUOTES

"Whatever happened to the extended family? That's *my* pet peeve!"

—Ubiquitous millionaire pundit Arianna Huffington, recently divorced from her husband, discussing child care on CNBC's *Equal Time*, October 23

"In Hitler and East Germany, we have experience with totalitarian and dictatorial systems you don't have in America. Because of that, we have a very strong conception of the power of the state to intervene."

—Interior Ministry official Ursula Caberta, who directs a propaganda campaign against the Church of Scientology for the city-state of Hamburg

Chip Bok

would not pass constitutional muster, the board went ahead and classified the campaigns as express advocacy. It then fined Americans for Limited Terms and Wisconsin Manufacturers and Commerce—but not the Sierra Club—for violating election law. The two groups marched into federal court and made a First Amendment challenge to the law, but a judge quickly told them to return to state court. The groups are battling the WSEB jointly and as individual plaintiffs in separate cases.

"It is chilling that we have sitting politicians who are immune from having their voting records examined," explains WMC spokesperson James Pugh. Pugh vows that his organization will take the case to the Supreme Court, if necessary, to vindicate its right to free speech.

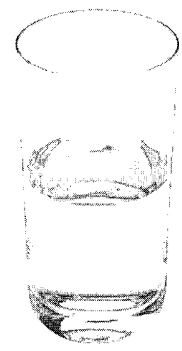
You're Soaking In It!

By Jacob Sullum

Did you hear the one about "dihydrogen monoxide"? It sounds like an Internet hoax, but it was in fact a real-life prank, albeit with a serious point.

Copying an idea from an Idaho junior high school student, Nathan Zohner, who used it in a science fair project, the European Science and Environment Forum recently asked 123 Londoners for their views on the substance we usually call water. ESEF, a think tank that fights environmental alarmism, informed respondents that "the chemical industry routinely uses a chemical 'dihydrogen monoxide' in its processes. It is used in significant quantities and often leads to spillages and other leaks, and it regularly finds its way into rivers and into our food supply."

The survey noted that dihydrogen monoxide is "a major component of acid rain" and, in its vapor state, "a major greenhouse gas." It "contributes to erosion" and "decreases the effectiveness of automobile brakes." Not only that, but "it can cause excessive sweating and vomiting," "accidental inhalation can kill you," and "it has been found in the tumors of terminal cancer patients." After hearing this litany, three-quarters of the respondents said dihydrogen monoxide should be "strictly regulated or even banned." Only 5 percent realized it was water (H_2O).



For the survey, ESEF interviewed people near two London subway stations during three days in August; 167 were approached, and 44 declined to participate. Although the sample may not have been perfectly representative of the general public, the results were similar to Nathan Zohner's in Idaho. Of 50 people he surveyed, 43 said dihydrogen monoxide should be banned. ESEF Director Roger Bate says the similarity suggests that another dangerous compound—scientific illiteracy coupled with an insistence on zero risk—is pervasive in Western countries.

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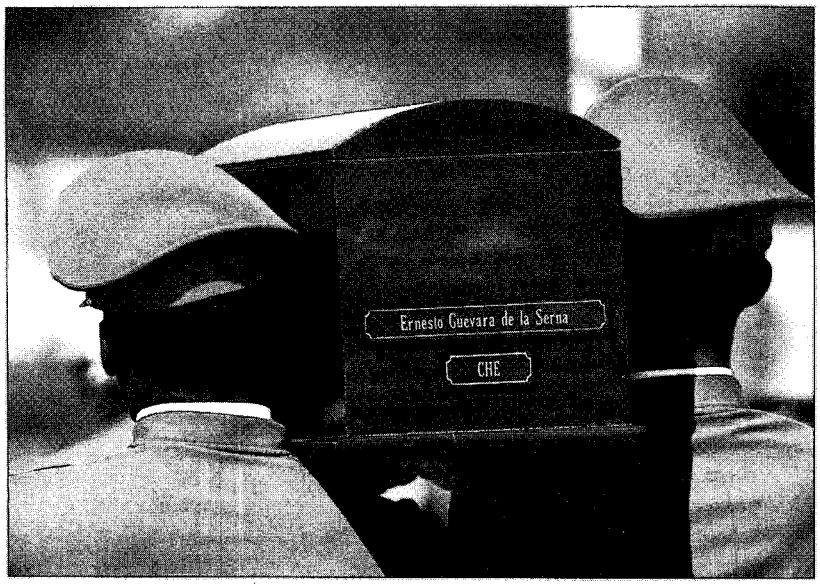


CANADIAN PRESS PHOTO / AP-WIDE WORLD PHOTOS

Che Pasa

Forget Sgt. Pepper—the commemorative soldier of the year was clearly Dr. Ernesto "Che" Guevara, the comandante who secured Castro's triumph against Batista. Government soldiers killed Guevara in 1967 while he was attempting a revolution in Bolivia.

The 30th anniversary of Che's death occasioned a fistful of adulatory reminiscences here and abroad. Cuba recovered his remains and declared a holiday during a near-religious (and very Communist) funeral procession from Havana to Santa Clara, the site of Che's most important military victory (and, now, his incorruptible bones). Much of Che's lingering mystique can be attributed to his unerring sense of style—in the '60s, Che's beret-and-fatigues combo provided the uniform for radical chic. And, as with an athlete who dies young, his death at age 39 saved him the indignity of transmogrifying into an aged Commander McBragg.

Unsurprisingly, the legends surrounding Che—including the inevitable one that he escaped death—shroud a mundane legacy of failure. As Castro's one-time top economic planner, he helped preside over the demise of the Cuban economy. And his subsequent attempts to foment revolution in Africa and South America failed miserably. That history may explain why, in eulogizing her father, Guevara's 36-year-old daughter could only sum up his life thusly: "In this moment, the entire world remembers a man who was very much alive."

—Nick Gillespie

Medicare: Robin Hood in Reverse

By Brian Doherty

Debates over reining in runaway Medicare costs often suggest that anything that would slow Medicare growth would also bash the elderly poor. A recent National Bureau of Economic Research study instead indicates that the wealthiest elderly get the most bang for their Medicare bucks.

The study's authors, Jonathan Skinner and Mark McClellan, divided 1.4 million Medicare beneficiaries into 10 income brackets, and compared Medicare payments since 1966 with recipients' expected lifetime benefits. Everyone tends to get more then he paid in. But the study found that those in the higher income brackets benefit even more than those in the lower. For example, the net lifetime gain for the second-highest income group was found to be $18,900, while for the third-lowest it was only $15,500. Thus, the study concludes, "the Medicare program effectively transfers money from low to high income groups."

LIBRARY OF CONGRESS

Taking Initiative

By Rick Henderson

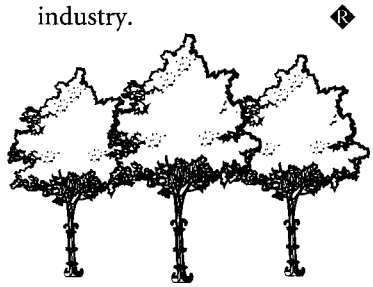
Even the financial might and vocal support of Bill Gates couldn't convince Washington voters to impose the nation's toughest controls on handgun ownership. By a 2-to-1 margin, Evergreen State voters rejected an initiative that would have forced all handgun owners, current and prospective, to register with the government. The state's major police organizations opposed the measure because they said it could never be enforced.

Voters decided hundreds of other ballot measures on November 4, including:

■ Washington voters rejected an initiative that would have allowed illegal drugs such as marijuana and heroin to be used for medicinal purposes. The measure also could have freed more than 300 inmates who were incarcerated for nonviolent drug offenses and would have eliminated jail time for simple possession. Republican presidential hopeful Steve Forbes flooded the radio airwaves with ads denouncing the proposal.

■ Nearly two-thirds of voters in Western Pennsylvania rejected an increase in the state sales tax that would have financed new stadiums for Pittsburgh's Pirates and Steelers.

■ Voters in Maine turned down a measure that would have ended "clear cutting," even in private forests. Opponents contended that the initiative's definition of *clear cutting* was sufficiently vague that it could have shut down much of the state's forestry industry.



JONATHAN NOUROK

Loco, Completamente Loco

The many failures of "bilingual education"

By Glenn Garvin

Rosa Torres had been dreading this call. Her daughter Angelica's first-grade teacher wanted to come over and talk. The teacher didn't say what she wanted to discuss, but Rosa knew. There had been a program on television, and the unfamiliar English words had rung in her head like a fire alarm: *learning disorder.* Surely that was what little Angelica had.

Every afternoon when she came home from school, Rosa asked the same question: What did you do in school today?

And every day Angelica gave the same answer: *Nothing.* She seemed bored, listless, maybe even—though Rosa didn't see how it was possible for a 6-year-old—depressed.

Rosa wondered how a child developed a *learning disorder.* Certainly there had been no sign of it a couple of years before, when Angelica started preschool at the YMCA. Rosa had been so worried, sending her little girl off without a word of English to spend a day among the American children. But everything had worked out just fine. Angelica rolled through there like a snowball, picking up more and more English every day. Soon she spoke it much better than Rosa, and after a while she spoke it much better than Spanish.

Of course, that wasn't surprising. After all, Angelica *was* an American, born just a few miles down the freeway from their home in Redwood City, a scruffy working-class town 30 miles south of San Francisco. It was her parents Rosa and Carlos who were the immigrants. They left Cuzco, the ancient Inca city in central Peru, with plans to study in America, learn English, get college degrees, live the good life.

Like most immigrants, they found out it wouldn't be all so easy as that—American landlords and shopkeepers wanted to be paid in cash, not dreams. Classes gave way to jobs, the kind you get when you can't speak English. Carlos was baking pizzas for a little more than minimum wage, Rosa babysitting for a little less. She spent her days with the children massaging the little bit of English she'd picked up in a couple of community college classes; the 3- and 4-year-olds were patient professors, never complaining about her fractured sentences, content to point at the big white thing in the kitchen and repeat the word *refrigerator* a hundred times if that was what it took for Rosa to get it. For adult company, she watched television while they napped, puzzling over Oprah's vocabulary as much as her ethos, smiling in secret delight whenever she got one of Regis and Kathie Lee's jokes.

The life, if not exactly the one she'd dreamed, wasn't a bad one. No one was sick, no one went to bed hungry. There was a roof over their heads. Little by little, they were adjusting to America. But now there was this trouble with Angelica. Apprehensively, Rosa waited, tried to steel herself to hearing the words *learning disorder* not from a disembodied voice on TV but from the teacher's lips; not affixed to some unfortunate, not-quite-real children from another part of the planet, but to her own daughter, right here, right now.

The teacher turned out to be a Japanese lady (well, American, really; Rosa had to keep reminding herself how it worked here) with a manner that was at once kindly and intense. "I think you need to go talk to the principal at the school about Angelica," she said after they settled in.

"What about her?" Rosa said, stomach churning, knowing the answer, dreading it.

"I think you need to get her into an English-speaking classroom," the teacher replied. "She understands English perfectly. And she doesn't like taking lessons in Spanish. I think it's really holding her back. It's damaging her."

"What do you mean, Spanish?" Rosa asked, silently cursing Oprah and Kathie Lee, who had obviously failed her, because this teacher wasn't making any sense.

"Spanish, that's what we're teaching her in," the teacher said. "Didn't anyone tell you? She's in a bilingual education program. Just go tell the principal she speaks English, and you want her out."

The teacher explained that Angelica, because she was Hispanic, had been swept into a class full of immigrant children who spoke little or no English. Rosa could understand how that might have happened. But why were the children being taught Spanish instead of English? How were they going to learn English if the school didn't teach it to them?

When the teacher left, Rosa still found it hard to believe the whole conversation hadn't been some horrendous translation glitch. The teacher had explained that Angelica, because she was Hispanic, had been swept into a class full of immigrant children from Mexico and El Salvador who spoke little or no English. OK, Rosa could understand how that might have happened. But why were the children being taught Spanish instead of English? How were they ever going to learn English if the school didn't teach it to them?

Nonetheless, a conversation with Angelica confirmed it. All day long, her teacher spoke Spanish. The books were in Spanish. Even the posters on the classroom wall were in Spanish. Only for a few minutes in the afternoon did the language switch to English. "And then we just learn some baby words like *bread* or *paper*," Angelica complained. Summoning the most malevolent curse in her 6-year-old vocabulary, she cried: "It's *dumb*!" Finally Rosa understood her daughter's moody shuffling of the past few months.

The solution, unfortunately, was not as simple as the teacher promised. When Rosa went in to see the school administrators a few days later, her request to transfer Angelica into an English-speaking class met with withering disapproval. "That's not in your daughter's best interests," one of the school officials said. They flashed incomprehensible charts around, used a lot of language Rosa didn't understand, but the message came through loud and clear: *We know better, we're the teachers.*

Rosa was doubtful. The idea that kids would learn English by being taught in Spanish all day seemed, well, kind of nuts—

especially for Angelica, whose best language was English. But ...but...who was she to question them? An immigrant babysitter lady who spent her days in pathetic conversations with 4-year-olds about who was smarter, Big Bird or the Cookie Monster? When Rosa left the office, her daughter was still enrolled in the Spanish class.

Each morning for the next two years, she watched Angelica mope off to a school that bored her nearly to tears. Each afternoon, when she checked the girl's homework, it was in Spanish. Rosa began to wonder why the program was called "bilingual." The principal had promised Rosa that the amount of English in the lessons would increase, but there was no sign of that happening.

And it never did. It wasn't until the family moved 20 miles south to Cupertino, a Silicon Valley suburb on the edge of San Jose, that Angelica got any English education. Then she had to have *a lot* of it. "Your daughter isn't reading anywhere near a third-grade level," the teacher told Rosa. "And she's behind in math and science, too." But Cupertino (fortunately, as far as Rosa was concerned) had no bilingual program. So Angelica stayed in the class, though all year she had to take special after-school English lessons with newly arrived Chinese immigrant children.

This is what bilingual education did for my daughter, Rosa thought bitterly. *It stole two years out of her life.*

It was a hard fight, but Angelica won them back. Nobody in the house likes to recall that ugly year she spent in the third grade, but when it was over, she had caught up to the other kids. And as the years passed, her mother and father started catching up, too, to those immigrant dreams that, for a time, had faded into the distance. They became U.S. citizens. Carlos went to school, got a job as a graphic designer. Rosa stopped babysitting and started cleaning houses, which paid better. Her English blossomed. She began taking accounting courses at a community college. Two more babies arrived: Nathan and Joshua.

Nathan entered school without incident. But in 1996, when Joshua was ready for the first grade, school administrators called Rosa. They were starting this new bilingual program, and....

As they talked, Rosa flashed back to that conversation nine years before, when a shy, frightened babysitter with a Peruvian passport let a bunch of school administrators overrule her common sense. She recalled the price her daughter paid. And she said: "No way."

Rosa Torres isn't alone. Bilingual education was born 30 years ago from a good-hearted but vague impulse by Congress to help Spanish speakers learn English. Instead, it has become a multi-billion-dollar hog trough that feeds arrogant education bureaucrats and militant Hispanic separatists. And now poor immigrant parents increasingly see it as the wall around a linguistic ghetto from which their children must escape if they want to be anything more than maids or dishwashers. Like Rosa Torres, they are starting to say *no way*:

■ At 9th Street Elementary School in Los Angeles, located on the edge of the city's garment district, parents held about 90 children out of class for two weeks to force the school to start teaching English. "The only time they spoke English at the school was during lunch and recess," said Luisa Hernandez, a sweatshop worker from Mexico whose 9-year-old daughter Yanira attends the school. "I want my daughter to learn English. All the exams for things like lawyers and doctors are in English. Without English, she would have to take a job like mine."

■ One hundred fifty Hispanic families in Brooklyn's Bushwick neighborhood sued the state of New York to force the release of their children from a bilingual program. Ada Jimenez, one of the plaintiffs, said her grandson spoke only English when he entered the Bushwick school system. "We were told that because my grandson has a Spanish last name, he should remain in bilingual classes," she said. Result: He flunked kindergarten. "He is now in seventh grade and cannot read in either English or Spanish," Jimenez said in an affidavit for the lawsuit.

■ Denver is considering a change that would limit students to three years in its bilingual program instead of the six that many of them have been staying. Leading the charge is school board member Rita Montero, who originally championed bilingual education—until her own son was enrolled. "The kids were doing work way below the regular grade level," she said. "I was furious." She yanked him from the program and enrolled him in another school across town: "I had to think, what is more important to me? To keep my child in a program where perhaps he'll learn some Spanish and that'll make me happy? Or do I want my child to be able to come out of public education with the ability to compete for scholarships, to be able to go to the college of his choice?"

■ An October 1997 poll by the *Los Angeles Times* showed that California voters favored a proposed ballot measure to limit bilingual education by an astonishing 4–1 margin. The support was greatest among Hispanics: 84 percent. "Wake up call for *los Maestros*...If you are into Bilingual Ed. your days are numbered," the bilingual paper *San Diego La Prensa* warned teachers. "We, *los Chicanos*, are responsible for putting you in...and you betrayed us. Bilingual Ed. has been turned into a full employment program for your own agenda that has nothing to do with our kids...that's why 84% of *la gente en* Los Angeles voted against you...YOU BLEW THE PROGRAM."

■ In Los Lunas, New Mexico, high school students walked out to protest the lack of English tutoring. In Dearborn, Michigan, the school board junked a proposal for $5 million in federal money to begin a bilingual program after parents complained. In Princeton, New Jersey, immigrant parents raised so much hell about rules that made it difficult to get their children out of bilingual programs that the state legislature stepped in to change them.

Though usually poorly organized and often relatively powerless—they often aren't U.S. citizens and sometimes aren't even legal residents—the parents are starting to make themselves heard. Michigan has adopted reforms in its bilingual programs. Bethlehem, Pennsylvania, did away with its bilingual program altogether. So did Orange County and three smaller school districts in California. In November, when Orange County voters were asked what they thought of the change, a crushing 86 percent approved.

An even bigger blow may be on the way in California, where

voters in 1998 will consider a ballot initiative making bilingual education optional. Under the "English for the Children" initiative, non–English-speaking children would normally be placed in a short-term "structured immersion" program; parents could, however, apply for a waiver to have their children instead placed or kept in a bilingual or English-only program. If it wins the sweeping victory that current polls predict, the proposition is bound to turn bilingual education into a hot-button issue around the rest of the country—just as previous California ballot initiatives on property taxes and affirmative action have started dominoes tumbling. At press time, it was unknown whether the initiative would be on the ballot in June or November.

The proposition is the brainchild of Silicon Valley millionaire Ron Unz, who got the idea from reading newspaper stories about the boycott of 9th Street Elementary in Los Angeles. Unz had long been skeptical about bilingual education, but it was only after speaking with some of the 9th Street Elementary parents that he realized how deep the discontent ran in California's Hispanic community.

"Immigrant parents always understood how damaging this was to their children," he says, "but it was hard for them to make their voices heard." Unz, a one-time Republican gubernatorial candidate, had the political and financial clout to turn up the volume. And as a longtime supporter of immigration—he was one of a tiny handful of Republican politicians to publicly oppose California's anti-immigrant Proposition 187 three years ago—he was immune to the inevitable charges of racism from bilingual advocates. Assembling a campaign around a nucleus of anti-bilingual Hispanic teachers (including Jaime Escalante, the math teacher whose success in East Los Angeles inspired the film *Stand and Deliver*), Unz has turned bilingual education into California's top political issue.

But the bilingual forces won't yield without a fight, certainly not to mere parents. When those buttinsky parents in Princeton were demanding the right to put their kids in English-speaking classrooms, Joseph Ramos, the co-chairman of the New Jersey Bilingual Council, advised the school board to tell them to mind their own business. "Why would we require parents unfamiliar with our educational system to make such monumental decisions," he asked, "when we as bilingual educators...are trained to make those decisions?" *We know better, we're the teachers.*

Some years ago, a newspaper sent me to interview S.I. Hayakawa, by then a retired senator from California. Hayakawa was legendarily combative: Asked once during a campaign stop what he thought about a local referendum on legalizing greyhound tracks, he snapped: "I'm running for the U.S. Senate. I don't give a good goddamn about dog racing." When I spoke with him, he had recently lashed out at bilingual education. It seemed paradoxical, to say the very least: Hayakawa was a native of Canada whose parents were born in Japan; he grew up speaking Japanese. He had authored a widely used book on linguistics. "Senator," I began the interview, "why are you against people learning to speak two languages?" He looked at me as though I were daft. "Who said anything about that?" he demanded. "Only an idiot would be against speaking two languages. I'm against *bilingual education.*"

That's still the biggest misconception among people who've never had a personal brush with bilingual education. It is *not* a program where two sets of children learn one another's language at the same time. That's called dual, or two-way, immersion. Only a few well-heeled school districts can afford to offer it, always as an elective, and the only complaint about it is that there usually aren't enough slots to go around. Another thing bilingual education is *not* is a program conducted mostly in English, where the teacher occasionally translates a particularly difficult concept, or offers extra language help to children with limited English skills. Known variously as English as a Second Language, sheltered English, or structured English immersion, these are all wrinkles in a technique that educators call *immersion*, because the students are expected to wade into English quickly.

"Senator," I once asked S.I. Hayakawa, the politician and renowned linguist, "why are you against people learning to speak two languages?" He looked at me as though I were daft. "Who said anything about that?" he demanded. "Only an idiot would be against speaking two languages. I'm against *bilingual education.*"

As Hayakawa explained to me that day, when educators use the term *bilingual education*, it's shorthand for "transitional bilingual education," which is the other major technique for teaching languages. TBE, as it is often called, was originally structured around the idea that students would take the main curriculum in their native language while they learned English, so that they wouldn't fall behind in other subjects. But over the past two decades or so, most school districts have reshaped their TBE programs to reflect the ideas of the so-called "facilitation" theorists of language education. The facilitation theorists believe that children cannot effectively learn a second language until they are fully literate in the first one, a process that can take four to seven years. (A new study from TBE advocates at the University of California at Riverside ups the ante to 10 years.)

During that time, a TBE student is supposed to be taught almost entirely in his native language, by a teacher fluent in that language, using books and films and tapes in that language. Gradually increasing bits of English are worked into the mix. At some point—bingo!—the child hits his "threshold" in the first language. Now he's ready to suck up English like a human vacuum cleaner.

The idea that a kid will learn English by being taught in Span-

ish does not usually strike people outside the education field as very plausible—*"loco, completamente loco"* was the reaction of Luisa Hernandez when the principal at 9th Street Elementary in Los Angeles explained it to her—but the theory is so inculcated in many teachers that they rarely question it. When they do, it can be a shattering experience. Rosalie Pedalino Porter, director of the Research in English Acquisition and Development Institute, taught Spanish bilingual classes in kindergarten and elementary school for five years in Springfield, Massachusetts. As a 6-year-old kid right off the boat from Sicily, Porter had done just fine without TBE, but education school had filled her with missionary zeal for the theory. She vividly remembers the day that she began to wonder if the bilingual god had failed.

It was a lesson in colors. *"Juan, que color es este?"* Porter asked one little boy, waving a box in her hand.

"Green," he replied.

"Verde," she corrected with the Spanish word.

"Green," Juan repeated.

"Verde," Porter corrected him again.

"Green," Juan answered again.

What in the hell am I doing? Porter wondered to herself. *Why am I telling him not to speak English?* Pretty soon, once her classroom door was closed, Porter was giving lessons in English. "I wasn't the only one, either," she says.

It seems certain that, on the day in 1967 that he introduced the first piece of bilingual-education legislation, Ralph Yarborough had no idea his handiwork would one day lead to the concept of English teacher as guerrilla warrior. Yarborough was a liberal senator from Texas who was disturbed about the high dropout rate among Mexican Americans and Puerto Ricans, which by some accounts ran as high as 40 percent. Yarborough asked for a paltry $7.5 million to set up some programs "not to stamp out the mother tongue and not to try to make their mother tongue the dominant language, but just to try to make those children fully literate in English."

In those twilight days of the Great Society, the Bilingual Education Amendment passed easily, triggering no alarms. Yarborough always said he didn't know and didn't much care what method was used to teach the kids. The concept of TBE didn't exist, and it would be another decade before facilitation theory came slithering out of the primordial linguistic ooze.

Yet, in retrospect, the warning signs were there. Hispanic activists flocked to testify for the bill, and very few of them said anything about learning English. Instead, they argued that the high dropout rate was due to the fact that Hispanic kids had low self-esteem because they weren't being taught in their native language ("or their *parents'* native language," as NYU historian Diane Ravitch acidly noted later).

And one witness, after suggesting that children might get some of their lessons in Spanish, admitted: "The Spanish-speaking parent is going to be opposed to this in many cases. Just last night at a little barbecue, we were talking about this bill...and one fellow said, 'Well, my wife doesn't want any of this for her children.' I should explain that this was a group of—all of us were Spanish-speaking, and we were speaking Spanish at the time ...These people were afraid of the bill or what it might do because they felt it would slow their children down in learning English. I want to say to them that there is nothing to fear."

But there was. Militant Chicano activists immediately began demanding that the money from Yarborough's bill bankroll Spanish-language instruction. Within three years, what was then the U.S. Department of Health, Education, and Welfare was issuing guidelines making bilingual programs compulsory for school districts. In 1974, the Supreme Court ruled in *Lau v. Nichols* that non–English-speaking children (in this case, a Chinese student in San Francisco) had the right to special language programs. The next year HEW said that meant bilingual programs, period—and not just for kids who couldn't speak English. Now bilingual education was expanded to include any child from a home where English wasn't the primary language. Even a kid who spoke like an Oxford don was headed for bilingual classes if his parents preferred Spanish or Chinese. By 1980, HEW had bludgeoned 500 school districts nationwide into creating bilingual programs, with more on the way.

All this had happened without a scrap of evidence that bilingual education worked at all, much less that it was the best way to teach language. Then, in the late 1970s, facilitation theory was born. Its foundation was a 1976 study of two groups of children who migrated from Finland to Sweden, one before entering the third grade, one after. The study found that the children who emigrated after the third grade—whose Finnish language skills would presumably be more developed—performed better in Swedish than the children who came earlier.

But there are two major problems with the study. One is that its statistics have come under ferocious attack from other researchers. The second is that the study neglected to mention that Swedish is the second official language of Finland and is taught in Finnish schools beginning in the third grade. So the older students had already been studying their "new" language when they arrived in Sweden, in some cases for several years.

The idea that a kid will learn English by being taught in Spanish does not usually strike people outside the education field as very plausible—*"loco, completamente loco"* was the reaction of parent Luisa Hernandez when the principal at 9th Street Elementary in Los Angeles explained it to her—but the theory is so inculcated in many teachers that they rarely question it.

Doug Lasken of Ramona Elementary School in Los Angeles taught a "bilingual" class for Armenian-speaking students. "I certainly don't speak a word of Armenian," he says. "But it was a fun class, with great kids, and we spoke English. They had learned it all by themselves."

"I visited Finland a few years ago and talked to linguists there, and nobody could believe we take that study seriously in the United States," says Rosalie Pedalino Porter. "They thought it was comical—the study has been discredited there for years."

No matter. Here, it gave rise to facilitation theory, which in turn gave a patina of intellectual respectability not only to bilingual education but to gringo bashing. The writings of Canadian linguist Jim Cummins, one of the big academic guns of facilitation theory, are studded with denunciations of "coercive relations of power" created by a "curriculum that reflects only the experience and values of white middle-class English-speaking students." If you doubt him, you surely are among the ranks of the "intellectual xenophobes" or "cultural hegemonists."

What Cummins and other TBE advocates don't like to admit is that they turn a blind eye to a multitude of acts of intellectual xenophobia and cultural hegemony *every day* in schools with bilingual curriculums. Here's one of the dirty little secrets of TBE: It's just for Spanish speakers.

"When you talk about bilingual education, people will get absolutely hysterical over how kids will be cognitively deprived if they're not taught in their native tongue," says Christine Rossell, a political science professor at Boston University who has observed hundreds of classrooms in her research on bilingual education. "And yet, thousands and thousands of children are not taught in their native tongue every day, and no one cares. Polish kids don't get taught in their native tongue. Vietnamese kids don't get taught in their native tongue. Russian kids don't, and Greek kids don't. Even though all these principles of bilingual education are supposedly universal, bilingual education is basically just Spanish, and no one seems to notice. I figure it's some kind of mass delusion. That's the only way you can explain it."

There are some true TBE classes in other languages. More often, though, a class labeled TBE in anything but Spanish will include at most a token nod to the native language. Doug Lasken, who teaches at Ramona Elementary School in Los Angeles, for a time presided over what was supposedly a TBE class for second- and third-grade Armenian-speaking children. "I certainly don't speak a word of Armenian, and never told anyone I did," Lasken remembers. "It was mysterious. I wondered what I was doing there sometimes. But it was a fun class, with great kids, and we spoke English. They had learned it all by themselves, without any special help at all." About the only hint of TBE in the classroom was some battered turn-of-the-century Armenian textbooks that were rarely opened.

One reason other languages have been discreetly pitched overboard is that any attempt to supply TBE for everyone who theoretically needs it would bankrupt the country before lunch. Schools in the state of New York include kids who speak 121 different languages. In the city of Seattle, 76. In Alexandria Avenue Elementary School in Los Angeles, 19—including Tagalog, Lao, Twi, Urdu, Punjabi, Hindi, Bengali, and Sinhalese. For each of these languages, a full curriculum would have to be planned, textbooks would have to be purchased, and certified teachers would have to be hired. It is a prospect that daunts even the most madcap tax-and-spend liberal.

But even if we invaded Saudi Arabia and seized all its oil to fund full-service TBE, we couldn't provide it. The teachers simply don't exist. When California's Little Hoover Commission, Sacramento's version of the General Accounting Office, investigated bilingual education in 1993, it discovered a statewide shortage of 20,000 teachers. Even among Spanish-speaking teachers, in by far the most plentiful supply, there was a 60 percent shortfall. When it came to Romanian, Farsi, Pashto, and Lahu, forget it. Of course, if anyone had applied for all those empty jobs, there was no way for California to evaluate their competence; the state had teacher certification tests for only nine of the dozens of languages spoken by its schoolchildren.

Some languages simply can't be taught at all in TBE, because they have no written forms. (Remember, the whole point is that students must not merely *speak* their native language but *read and write* it well before they move on to English.) That has not stopped the educrats from trying. In Massachusetts, school officials actually created an alphabet so that Kriolu—an obscure spoken-only dialect of Portuguese used in parts of the Cape Verde Islands—could be written for the first time. Textbooks

JONATHAN NOUROK

and a curriculum followed, and now Massachusetts boasts the only schools in the entire world where classes are taught in Kriolu. (The unenlightened schools of the Cape Verde Islands continue to teach in Portuguese.) Massachusetts even sends home report cards and school bulletins in Kriolu. The parents have no idea whatsoever what this stuff says—none of *them* can read Kriolu—but their opinion hardly matters, does it? *We know better, we're the teachers.*

It is tempting to label the Kriolu classrooms as the all-time most hare-brained product of bilingual education, but in considering TBE, caution is always advised; this is a field lush with opportunities for stupidity. A better choice may be experiments during the 1970s in New York City and Laredo, Texas, where teachers were trained to speak "Spanglish" ("Hey, Maria, *vamanos por el cine* Orpheum, they're having a festival *de peliculas de directores de Cuba* tonight"), supposedly the native language of local schoolchildren. Furious Puerto Rican parents snuffed the idea before it got anywhere in New York, but the Laredo program is still cited in bilingual literature as "the concurrent approach."

Here's another crazy aunt locked away in the bilingual attic: TBE administrators ruthlessly and routinely shanghai English-speaking kids into the program. What happened to Rosa Torres's daughter Angelica is by no means uncommon, and it is far from the most extreme example. Nor is it something that only happens to the children of easy-to-bully new immigrants.

Exhibit A: 7-year-old Tony, a third-generation American who speaks English like a kid who grew up in Ames, Iowa, or Manhattan, Kansas. Favorite TV show: *Sesame Street.* A member of the Children's Book of the Month Club. And here's the acid test: A recent visitor to Tony's home heard him playing by himself in his bedroom, barking English commands to his GI Joes. In other words, there's no earthly reason for Tony to be in a TBE class.

But Tony doesn't live in Iowa or Kansas. And to the officials in his school district in the Southern California city of Hawthorne, there was only one relevant factor: his last name, Velasquez. When he started first grade in 1995, they put him in TBE. The school did notify his mother Ericka, who offered no objection. She heard the word *bilingual* and figured it meant he was in a class where he would study both Spanish and English. Ericka and her husband speak both languages and wanted to make sure Tony did, too. But after a few weeks, she began to have doubts.

"All his spelling words, every day, were in Spanish," Ericka recalls. "I began to wonder, is this really bilingual? Or is it just Spanish?" Finally she paid a visit to the school, where she discovered Tony's class spent just a few minutes a day on English. "I want him out of here," she told the teacher. Nonetheless, it took an entire year of skirmishing before he moved to an English classroom. "I was so mad," Ericka says, brow knitting as she thinks about it. "All that time wasted! He was so confused—why was he in Spanish classes when he knew English? He wants to be in English like the other kids...Now, for the first time, he likes doing his schoolwork."

Ericka Velasquez's 7-year-old son Tony was put into a bilingual class—even though he grew up speaking English. "I'm an American, I know the ropes, and it still took me a year to get Tony out," she says. Immigrant "parents will never be able to do it."

What still makes her sad is remembering the immigrant children from El Salvador and Nicaragua who stayed behind when Tony left his TBE classroom. "These kids come from other countries, and I don't know how they're going to learn English if they keep feeding them the language of their native countries," Ericka says. "But they're stuck there. I'm an American, I know the ropes, and it still took me a year to get Tony out. Those kids' parents will never be able to do it."

The idea that those children must be taught in Spanish is ludicrous to Ericka. The daughter of a Nicaraguan immigrant, as a child she never heard English in her own home and spoke none at all when she started school. Yet she speaks it perfectly now, in the stop-and-go cadences (though not the loopy vocabulary) of the Valley Girls who shared her all-English classroom. "If children can't learn English without a special program," she wonders, "how do you explain me?"

School systems shunt kids into TBE all the time strictly on the basis of a Hispanic name. When Linda Chavez was director of the U.S. Commission on Civil Rights, she was amazed to discover that the Washington, D.C., schools had placed her

JONATHAN NOUROK

son Pablo in a TBE class—despite the fact that he didn't speak a word of Spanish.

But even school systems that pretend to use more sophisticated techniques for evaluating students often misroute English speakers into foreign-tongue classrooms. Typically, the district conducts a "home language survey" of new students to determine which ones come from a non–English-speaking background, then uses a standardized achievement test to zero in on kids who will be placed in TBE.

Home language surveys, however, are hopelessly broad. They typically ask if *anyone* in the home speaks another language, a fatal flaw when dealing with immigrant households that often include three generations with widely varying language patterns. If Grandma was already 60 when she came to the United States from Saigon or Havana and never learned to speak English, little Tuyen or Rodrigo has to take the test, regardless of the fact that he speaks *nothing* but English.

Nor will the tests necessarily save them. Most school districts will designate any child who scores below a certain percentile—generally somewhere between the 30th and 40th—as "limited-English proficient" and whisk them off to TBE classes. The godawful fallacies in such an approach are obvious to anyone without an advanced degree in education:

- The achievement test shows only the student's attainment in English, not in the other language. So a kid who scores 29 goes into TBE even if he doesn't speak a word of Spanish.
- The achievement test does nothing to identify the *reason* for the low score. A child who scores 25 may indeed need help with his English; or he may just need remedial education, period. There's no way to tell from the test score itself.
- Last and certainly not least, 40 percent of the children taking an achievement test will *always*, by definition, score in the lowest 40th percentile. And it doesn't necessarily say anything about whether they know enough English to understand history or math lessons.

"These tests are designed to break the students who take them into 100 categories and rank them," says Boston University's Rossell, who has written extensively on the testing issue. "They don't include anything at all about basic English communication skills, because they're designed for English-speaking students who for the most part have those skills." As critical as she is of the achievement tests, which are given to older children, Rossell actually shudders when she talks about the oral tests given to incoming kindergarten and first-grade students.

"I have a professor friend whose kid was given an English oral proficiency test because he had a Hispanic name," she said. "The kid tested as limited-English proficient even though he didn't know any language besides English. But he's kind of an odd kid, just wouldn't answer some of the questions, and acted bored. That's not exactly uncommon with 5-year-olds. They may not feel confident enough to answer questions asked by a stranger, or they may just not feel like talking at all at that moment."

The failures of standardized tests are much more than theoretical. When the U.S. Department of Education investigated federally funded bilingual programs in Texas in 1982, it found 90 percent of the students designated limited-English proficient actually spoke better English than Spanish. A 1980 study of several California school districts showed only about half the Hispanic limited-English proficient students spoke better Spanish than English; 40 percent spoke no Spanish at all.

Attempts to develop language aptitude tests that would do a better job of identifying TBE candidates haven't met with much success. As an experiment, one such test was given to Chicago students who spoke English only and were above-average readers. Almost half of them wound up classified as non– or limited–English-speaking. A later experiment with English-only Cherokee Indian students had nearly identical results.

The victims of testing malpractice, by the way, are almost always kids from poor families. "There's a ton of research showing that students from economically disadvantaged households score lower than the rest of the population on standardized tests," says Rossell. Yet the church and civil rights groups who would undoubtedly be in a blood frenzy if these tests were being used against poor kids for virtually any other purpose are curiously quiet about TBE.

On the other hand, maybe it's not curious at all. For they didn't say anything, either, when the *San Francisco Examiner* discovered that more than 750 black students had been arbitrarily dumped into the city's Spanish or Chinese classrooms to fulfill school district integration policies. (The *Examiner* also found 325 children who used something besides English at home were put in Spanish or Chinese TBE classes on the grounds that they needed bilingual education, even if it was in a language they didn't speak.) One elementary school principal candidly admitted that he knew he was supposed to ask parents before transferring students into TBE, but never did. "If I went and asked everybody," he explained, "I'd get too many no's." *We know better, we're the teachers.*

The *San Francisco Examiner* discovered that more than 750 black students had been arbitrarily dumped into the city's Spanish and Chinese classrooms to fulfill school policies. More than 300 children who used something other than English at home were put in bilingual classes on the grounds they needed bilingual education, even if it was in a language they didn't speak.

The *Examiner* story ran in 1991, but the practice continues. "I meet with black parents all the time whose kids have gotten trapped in this thing," says attorney Cynthia McClain-Hill, who has squared off with the Los Angeles schools several times. "I can

tell you this is a smoldering volcano in the African-American community."

Some of TBE's shortcomings might be argued away, or at least choked down, if bilingual education actually *worked.* But it doesn't. "When this all started out, we didn't know anything, so we adopted bilingual education on a leap of faith," says Rosalie Pedalino Porter of the Research in English Acquisition and Development Institute. "Thirty years later, we know better. The effects have been almost uniformly negative."

Sifting through social science research is always tricky for a layman; there are so many studies, their methodologies obscured in thick layers of jargon, their outcomes in impenetrable mathematics. Fortunately, when it comes to bilingual education, someone has done the academic grunt work for us. Christine Rossell and her research partner Keith Baker, who directed several studies of bilingual education for the U.S. Department of Education, sifted through scientific evaluations of 300 bilingual programs. Their first conclusion: Most of the research was just plain rotten. "It's as bad as the dueling psychologists you see in criminal courtrooms," Rossell says. Of the 300 evaluations, Rossell and Baker found only 72 that were methodologically sound.

Then they compiled a scorecard based on the results. The outcome was devastating for TBE. In head-to-head comparisons with the various versions of immersion teaching on reading, grammar, and math, TBE lost every time. That is, there were always more studies showing immersion therapy produced superior results. Often, *lots* more. For instance, 83 percent of the studies comparing TBE to "structured immersion" teaching (essentially, using simple English) showed kids learned to read better in the structured immersion classes; not a single one showed TBE to be superior.

Perhaps the single most calamitous statistic was in the comparison between TBE and *doing nothing at all.* An amazing 64 percent of the studies found kids learned grammar better in sink-or-swim classes without any special features whatsoever than they did in TBE. Many critics have seized on another way of evaluating TBE's results: the length of time it takes students to "graduate" into mainstream classes. Many school districts don't even compile those statistics—do they fear the results, or do they just not care? and which is worse?—but where they're available, the numbers are sad.

A 1994 study in New York City showed only about half the children who enter TBE in kindergarten have been mainstreamed within three years. For kids who enter in the second grade, the number drops to 22 percent. And in the sixth grade, just 7 percent. By contrast, 80 percent of students who enter immersion programs in kindergarten, 68 percent of those who enter in the second grade, and 33 percent of those who enter in the sixth grade are mainstreamed within three years.

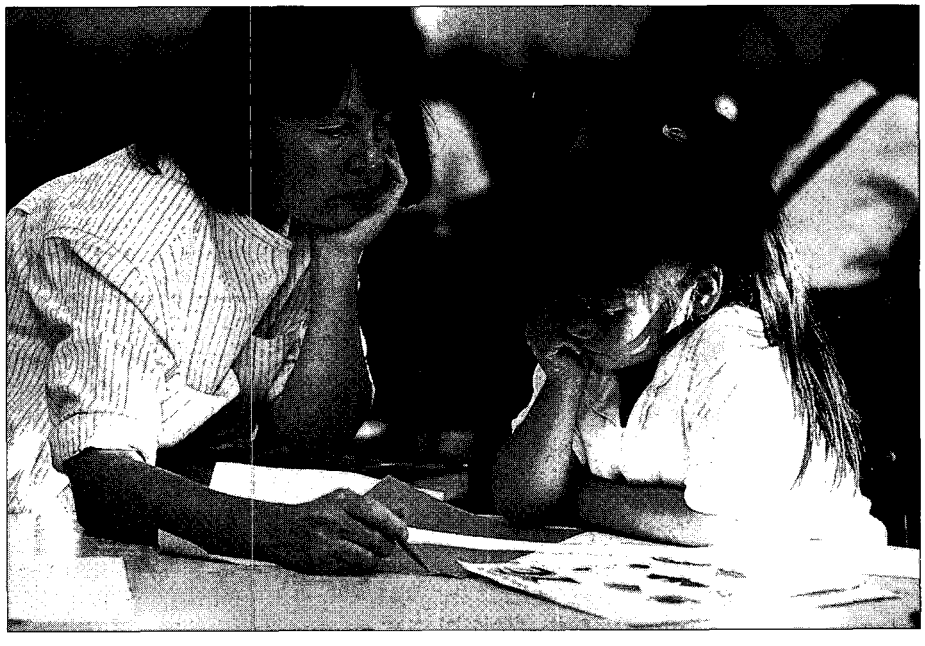
A 1985 report on TBE in Boston showed more than half the TBE students in high school or middle school had been in the program six years or more. Across the country in Seattle, a 1993 study showed the annual exit rate from TBE was 10.6 percent. In California, it's less than 6 percent. These rates are low even according to TBE theory, which says kids should be ready for English classes in four to seven years.

Not everyone agrees that exit rates are terribly significant. "Transition out of TBE is a function of local politics and test scores on very unreliable tests, not whether or not you know English," says Rossell. "The reality is that teachers inside the program are cheating, teaching English even though they're not supposed to. So the good news is that bilingual education is not as harmful as people think."

Try arguing that point to Alice Callaghan, who runs the Las Familias del Pueblo family center in the Los Angeles garment district, and she has an easy comeback. It's a paper written by one of the little boys who comes to her center each day after school, a veteran of six years of TBE: *"I my parens per mi in dis shool en I so I feol essayrin too old in the shool my border o reri can grier das mony putni gire and I sisairin aliro sceer."*

"The school district says this boy is doing very well and he's nearly ready to leave bilingual classes," says Callaghan, shaking her head. "As far as I'm concerned, that says it all."

It was at Callaghan's center that the boycott of 9th Street Elementary was conceived. For an entire year, the immigrant



Alice Callaghan runs the Las Familias del Pueblo family center in Los Angeles, where Latino parents conceived their boycott of 9th Street Elementary. "For them to do this," says the self-described "Teddy Kennedy liberal," "shows you the frustration they were feeling."

JONATHAN NOUROK

parents of the kids in her after-school program had been trying to meet with administrators at the school to ask for more English in the curriculum. No thanks, said the school officials. *We know better, we're the teachers.*

The parents gathered at the center to try to figure out their next step and asked Callaghan for some suggestions. Well, she said, we could write letters to state officials. We could pass around a petition. We could boycott, pull the kids out of class until the school officials do what we're asking. We could—"Boycott! Boycott!" shouted one of the mothers, jumping out of her chair. "Let's do the boycott!"

"It was instantaneous," recalls Callaghan. "Everybody agreed. I was shocked, frankly. A lot of these people don't have legal papers. For them to do this, to call public attention to themselves, it shows you the frustration they were feeling. And they were right. Without the boycott, I think we might as well have gone outside and talked to the tires on our cars. That's how much progress we were making."

School administrators reacted to the boycott like plantation overseers to a slave revolt, calling police out to try to break up the parents' picket line, then phoning them at the garment factories where they work to warn them that keeping their children out of school was illegal.

In the end, though, the bright light of publicity generated by the boycott caused the school officials to scuttle for the corners. They capitulated, though later some would hint darkly that the parents had somehow been duped and manipulated by Callaghan. It is a charge that puzzles the parents. "It was our idea, we were the ones who wanted to do it," says Juana Losara, a Mexican seamstress whose three children attend the school. "I knew my children needed help. I would hear somebody speaking English on the street or on TV, and I would say to the kids, 'What's he saying?' And they would all answer, 'I don't know.' They were born here, but they don't speak any English."

When Losara found out her children were spending less than an hour a day on English, she went to the school. "All the other American children are speaking English at this age," she told an official. "Why aren't mine?" The answer—be patient—was not good enough. "If they don't learn English at this age, at 9 or 10, they aren't going to speak it when they grow up," she said.

Losara knows how hard it is to learn English later: After 15 years in this country, she barely speaks a word. She knows the cost, too: "If I could get English, maybe I could get a job I like better. But the first question is always, 'Do you speak English?'" So, like her husband, she stays at the big sewing machines in the garment factories, toiling away for minimum wage.

Going back to Mexico, though, never crosses her mind. "I want to stay here," she says quietly. "I want my children to be something. My husband and I are nothing. But we're struggling so they can be something."

Perhaps the most telling argument of all against bilingual education is the high school dropout rate among Hispanic students: 30 percent, more than double that for blacks or whites. Those who have difficulty with English are far more likely to drop out. The message has gotten through to Hispanic parents. The *Los Angeles Times* poll showing their support for the anti-bilingual ballot proposition in California was hardly the first to reflect their skepticism about TBE. A 1996 survey of Hispanic parents in Houston, San Antonio, Miami, New York, and Los Angeles showed that they regard teaching English as the single most important thing that schools do. Second: math, history, and other academic subjects. Spanish finished a distant third.

But Hispanic politicians and activists, wildly out of touch with their own communities, continue to wave the bloody bilingual flag. Characteristic is their reaction to the California proposition. Although the proposition would establish "sheltered English" or "structured immersion" as the educational norm in California, it would by no means make TBE illegal or force schools to do away with it. Any parents who want to place their children in TBE could do so by asking for a waiver.

Hispanic politicians and activists, wildly out of touch with their own communities, continue to wave the bloody bilingual flag. "If we lose bilingual education in California today, we could easily lose it everywhere tomorrow," warns Antonia Hernandez, president of the Mexican-American Legal Defense Fund.

You'd never know that, though, from the way opponents talk. "If we lose bilingual education in California today, we could easily lose it everywhere tomorrow," warns Antonia Hernandez, president of the Mexican-American Legal Defense Fund. Chimes in Rep. Xavier Becerra (D-Calif.), chairman of the Congressional Hispanic Caucus: "Hopefully, our community will see this as another case of immigrant bashing and react."

Even more hysterical has been the reaction of academicians. James Lyons, executive director of the National Association of Bilingual Education, recently predicted that without TBE, children would no longer be able to speak with their grandparents. "That isn't what we want in America," he implored.

Rosalie Pedrino Porter believes TBE's champions will conduct a scorched-earth campaign in its defense, no matter what polls show about what parents really want. "It's now wrapped up in politics—ethnic politics, victimhood, which of course gives you preferential status through affirmative action," she says. "It's wrapped up in money and power and control. Now we have a huge bureaucracy of administrators, bilingual psychologists, textbook publishers producing books in Spanish. Whether anybody wants to admit it or not, there's a huge investment in keeping

this going. The fact is you can't make changes in this program very easily."

The financial incentives to keep TBE on life support are considerable. Because the money is scattered across thousands of budgets at the state, local, and federal level, and often not plainly labeled, it's difficult to come up with a reliable estimate of TBE's costs, but they probably approach $2 billion. In California, bilingual certification can mean up to $5,000 extra a year for a teacher.

Even more important, though, may be the groupthink that afflicts TBE's chattering-class supporters. The integrationist impulse of the 1960s is dead. Liberal chic in the 1990s is segregation, dressed up as identity-group politics. It's embarrassing enough that immigrants believe in an American dream that liberals long ago declared mythical and absurd. But that they want to drag their children into it, too!

The financial incentives to keep bilingual education on life support are considerable. Because the money is scattered across thousands of budgets at the state, local, and federal level, it's difficult to come up with an estimate of annual costs, but they probably approach $2 billion. In California alone, bilingual certification can mean an extra $5,000 a year for a teacher.

"A lot of my friends were just scandalized when I started saying I supported the anti-bilingual initiative," says Alice Callaghan. Callaghan, who describes herself as "a Teddy Kennedy liberal," had impeccably politically correct credentials until she got involved in the 9th Street Elementary boycott: An Episcopal priest who's spent 16 years working with sweatshop workers and their kids, she's the veteran of many a civil rights sit-in—even has an arrest record. But the price of supporting English education for the children at her center has been far higher than any she ever had to pay for opposing U.S. military adventures or support for South Africa. Just for starters, the University of Southern California—a stronghold of TBE theory—has just canceled a $238,000 grant to her center.

And her movement friends who still speak to her do so in tones of pity. "It must be tough being out there all alone," one said recently. "It's not so lonely," Callaghan replied. "There may not be any liberals out here with me, but there are plenty of the people that liberals say they want to help."

Still, there may be hope. People *do* change. Fernando Vega did. Vega, in a very real sense, is responsible for everything that happened to Rosa Torres, the Peruvian immigrant whose daughter got snarled up in Redwood City's TBE program. Fernando, you see, was the guy who got the Redwood City schools started down the bilingual path nearly three decades ago.

Not that he meant Rosa any harm. In fact, his story is, in many ways, similar to hers. Fernando is an American—born in Houston, he grew up right on the border in Brownsville, Texas—but his parents were Mexican immigrants. They spoke only Spanish, but Fernando's dad was a demon about learning English. Sometimes he would make the boy come out with him and lug backbreaking loads of shingles under that scorching Brownsville sun. "It's hot, no?" his father would ask after they'd been at it for a while. "Yes, Papa," Fernando would gasp. "Remember it, then," his father commanded. "And stay in school."

Fernando did, until World War II broke out. Then he enlisted in the Army Air Corps and learned to fix planes. After the war he got a job with Pan Am. He was such a good mechanic that after a while, the airline asked him to train others. So in 1958 he left Brownsville for San Francisco. With his wife and six children, Fernando settled in Redwood City.

It was a small town in those days, without many Hispanics. But Fernando never had any trouble until his eldest son Oscar was ready for high school. Together the two of them sat down and planned the courses Oscar would need to go to college. Algebra, civics, biology. But when Oscar came home from his first day of school, he had a new schedule: general math, ceramics, and woodworking.

"This is not what I want for my son," Fernando told the guidance counselor. "You never consulted me about these changes."

"The courses you wanted for him are reserved for kids who are going to college," the counselor explained. "And, let's be realistic, Oscar isn't going to college. But if he comes to these classes every day and behaves himself, he'll get a diploma."

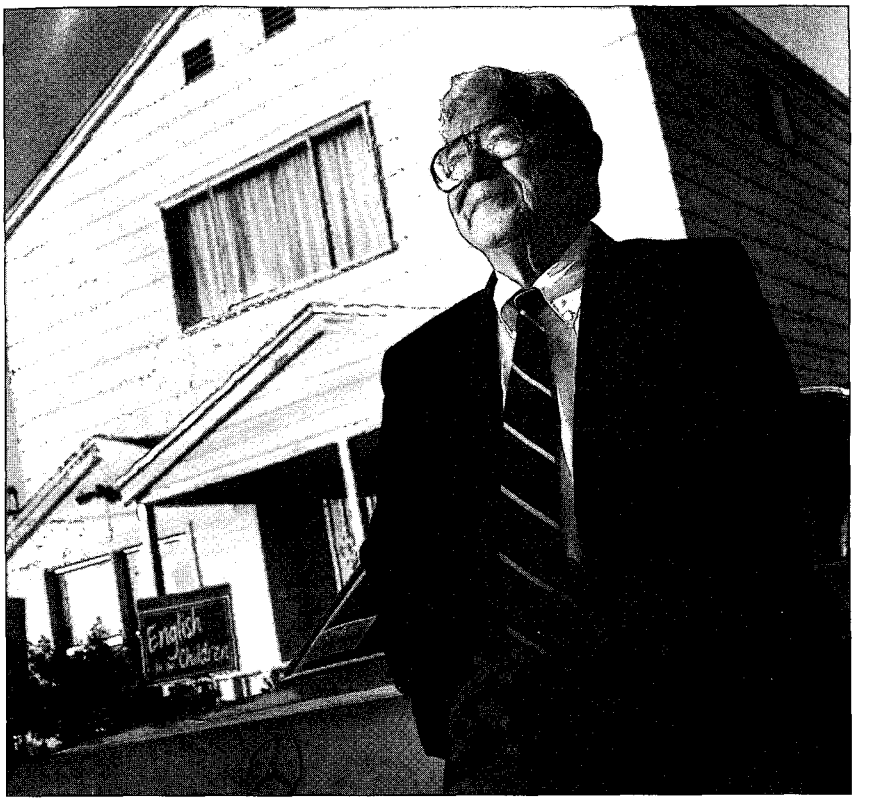
"This school doesn't belong to you!" Fernando growled. "I pay taxes for this place!" He stomped out. After some angry talk at a school board meeting, he got Oscar back into the college prep classes. But every time one of his children started high school, Fernando had to go through the whole damned thing again. After a while, other Hispanic parents were calling, asking for his help with their kids. He got to be so good at it that he was elected to his own seat on the school board.

It was around 1970, when Fernando was visiting one of the schools, that a teacher approached him. "Mr. Vega, you know we're starting to get a lot of immigrants from Mexico here," she said. "And some of the children don't speak a word of English. I've got three in my class right now and I don't know what to do with them. Is there any money we could use to hire some teachers' aides who speak Spanish? Just to get them started."

Fernando called the superintendent, who remembered getting a notice that there was some federal money available for a new program called bilingual education, taught partly in Spanish, partly in English. Fernando, bemused, gave it some thought. Back in Brownsville, he'd learned English sink-or-swim in the

first grade, and things had worked pretty well—not just for Fernando, but for a lot of Mexican kids who were allowed to attend school on the American side of the border. One of them even became the valedictorian of his high school class.

On the other hand, you had to be open to new ways of doing things. When Fernando started out in the Army Air Corps, everybody carried a slide rule to calculate things like fuel consumption. But these days, all the pilots and flight engineers carried little electronic calculators. That was progress. This bilingual education, it was progress too. "Let's get some of that money," he told the superintendent.



Former school board member Fernando Vega help create Redwood City, California's bilingual program in the '70s. After his English-speaking grandsons were put in bilingual classes against their parents' wishes, he became a supporter of the "English for the Children" initiative.

Fernando couldn't believe how quickly things moved after that. They hired teachers, not aides, with the federal money—and because bilingual teachers were hard to come by, they accepted some who Fernando privately didn't think were very good. But there wasn't much he could do about it. They needed more bilingual teachers every year, because the program was getting huge—new waves of immigrants were pouring in, but none of the kids seemed to be moving over into English classes. It was all a little disquieting, but before it reached the point of alarm, Fernando left the school board. His kids had all graduated, and it was time to do something new. He won a seat on the city council, then became an official in the state Democratic Party, finally a national organizer. The problems of Redwood City's schools were a distant memory.

Until the day in 1988 that Oscar stopped by the house. Fernando's eldest son now had a little boy of his own, Jason, who just two weeks ago had started the first grade. Funny thing, though—his class was taught in Spanish, a language the child didn't know. When Oscar went over to the school to ask that Jason be moved into an English classroom, the principal said there weren't any.

"Besides, he needs to learn Spanish," the principal added. "It's a shame he doesn't know his native language."

"English *is* his native language," Oscar retorted. "He's an *American.* He's never even been to Mexico." The principal just shrugged.

"What am I going to do, Dad?" Oscar asked after he'd told the story. "They won't listen to me at all."

Fernando didn't answer for a minute. He was still marveling at the insane mutation of a small act of kindness to some immigrant kids two decades earlier. He had gotten involved with the schools in the first place because they were trying to segregate his children under the guise of academic tracking. Now they were trying to do it again, to his grandchildren, under the guise of language instruction.

Finally he spoke. "I guess you're going to have to do what I did, when they wouldn't listen to me about your classes," he counseled Oscar. "You're going to have to run for the school board."

Oscar did. He won—it turned out that a lot of Redwood City parents had been hoping someone would voice their discontent about TBE—and though it took some time, he helped rein in the program's worst excesses.

Now, at 73, Fernando is mostly retired from politics. But last fall, when he heard about the California ballot proposition that would cut back TBE, he stopped by one of the campaign offices to find out what it was all about. Impressed at the explanation, he took home some signs bearing the proposition's slogan, "English for the Children," in both English and Spanish. He stuck them in his front lawn.

That evening, the doorbell rang. "Excuse me, mister," a woman—a Salvadoran, by the sound of her Spanish—asked when Fernando answered. "I saw your sign. Do you teach English here? My children need to learn it."

"I'm sorry, the sign is about something else," Fernando replied. "But why do you need an English teacher? Don't your children go to school?"

"Of course they do," the woman replied sadly. "But at the school, they only teach Spanish."

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NEIL MICHEL

Shaky Recovery

Three years after a devastating earthquake, Kobe is still in ruins. Why can't Japan cope with disasters?

By Michael J. Oakes

On January 17, 1995, an earthquake measuring 7.2 on the Richter scale rocked the port city of Kobe, Japan. The quake, which came almost exactly a year after one of a similar magnitude in the Los Angeles suburb of Northridge, dominated the news with the images of ruin and desperation that inevitably follow such a disaster: displaced residents mourning the dead and worrying over the missing; elevated highways turned perpendicular to the ground; buildings reduced to rubble. The toll of the Kobe earthquake was stunning: 6,400 dead, $100 billion in damage.

Confusion and disruption are the rule in an earthquake and its aftermath. This is to be expected when solid earth turns to shifting mass, when streets split open and buildings fall under their own weight. But such a crisis tests far more than the faith of victims and the integrity of existing structures. It also tests the limits of how social, political, and economic systems—and the people operating within those systems—adapt, recover, and rebound from dramatically changed circumstances. An earthquake is a special case, one that brings to light usually subterranean organizing principles even as it brings down buildings and roadways. In this sense, the story of how Kobe responded (and continues to respond) to the quake is about much more than a city righting itself after a natural disaster.

ALL PHOTOS: THE JAPAN TIMES

Opposite page: A child walks between temporary housing units on Rokko Island. Three years after the Kobe earthquake, more than 27,000 families are still living and working in temporary buildings.

It is about how underlying rules and customs either facilitate or retard not just recovery from a natural disaster, but the ability to adapt and develop over time.

This is, then, a frustrating story. It is one that raises serious questions about Japan's much-vaunted devotion to top-down order and stability and its implementation of a "plan-rational" at almost every level of society. Over the past two decades and as the first of the great Asian tigers, Japan has been hailed for the success of its "administrative guidance," its ability to implement elite economic planning that somehow managed to steer clear both of the "excesses" of unbridled capitalism and the poverty of a command economy. As its economy went into recession in the '90s, enthusiasm for Japanese-style economic management and planning understandably waned. A close look at the Kobe earthquake and the city's slow recovery efforts suggests reasons for the larger problems in Japan's economy.

The disaster in Kobe reveals a set of guiding principles that not only hampered rescue efforts but even contributed to the quake's damage. Indeed, those policies have helped ensure that more than 27,000 families are still living and working in temporary buildings three years after the disaster—despite Japan's wealth. By substituting bureaucratic regularity for entrepreneurial innovation, government dictates for market processes, and vague group ownership for clear-cut property rights, the status quo in Japan has helped make the rebuilding of Kobe immeasurably more difficult than it needs to be.

Such problems became evident as soon as the earth stopped shaking. A post-quake report issued by the Kobe YMCA is filled with anecdotes such as this one: Three days after the quake, two women from Kobe Citizens Central Hospital appeared at city hall asking for 10 volunteers to help carry water at the hospital, located about a mile away. Water duty, they explained to city workers, pulled too many skilled nurses from more-urgent medical tasks. Officials on the first floor of city hall turned the women away. Yet on the eighth floor of the same building was a list of 5,000 registered volunteers willing to help any way they could. When the women came back for more help, officials told them to return later with a written request.

Similar bureaucratic procedures beset rescue and recovery efforts at the national level as well. Officials turned away doctors from the United States because they were not certified to practice medicine in Japan. They quarantined European search dogs while Kobe residents picked through the rubble by hand. Even offers of help from within Japan were refused: Although a disabled phone system presented a critical problem to search-and-rescue efforts, officials refused to distribute cellular phones donated by Nippon Motorola because they didn't want to issue the required telephone identification numbers. Officials initially rejected an early offer of medical help from the Japanese Association of Acute Medicine because they were unfamiliar with that organization; they changed their minds a week later as a flu virus raged through evacuation shelters.

The director of Kobe's international affairs division, Kiyoyuki Kanemitsu, exemplifies the distaste many officials show for stepping out of their regulated routine. When asked about the frequently hostile attitude toward volunteers wanting to assist rescue and emergency care operations, Kanemitsu explains, "In order to coordinate [the volunteers] it would take a lot of time, and we needed a bigger picture of the total damage. Also, we didn't know much about the people who volunteered. Frankly, we couldn't verify the trustworthiness of the people who volunteered, so we could not take responsibility for them."

Once a "bigger picture" developed, however, officials seemed no more interested in expediting recovery efforts. In Japan, plumbers are certified by municipal authorities and are prohibited from working outside their particular area. In the weeks after the earthquake, plumbers from Osaka, Kyoto, and other cities could not legally work in Kobe, even though the water supply system was in desperate need of repair. For Kanemitsu, the earthquake wasn't enough of a reason to relax such rules. Plumbers, he states firmly, "have to be qualified for our city. They have to be qualified to use the right tools....We will have another problem if we start another system. It's not good for us in the long term to consider this kind of action." A similar problem afflicted construction workers, especially carpenters who specialize in building traditional Japanese homes. Normal operating procedure requires craftsmen to be certified for such work. The post-quake need for repairs—and the strictly limited supply of labor—was no cause for change. As one city official told the *Los Angeles Times*, "Even in an emergency, we don't desire letting in simple laborers." (More than a year later, some of the requirements affecting carpenters were finally relaxed.)

Such responses were in marked contrast to succor offered from less-official sectors of Japanese society: Immediately after the earthquake, the Kobe YMCA was swamped with volunteers, many of whom had been turned away by city hall. YMCA managers quickly established an emergency headquarters and organized the volunteers into teams that canvassed damaged neighborhoods and reported back on what victims needed most. By bicycle and on foot—and wearing identifying numbers normally used for YMCA sporting events—volunteers delivered food, water, clothes, and blankets. Even members of the *yakuza*—Japan's organized crime gangs—used their networks to bring food, water, and other supplies into the area. Right-wing political groups, whose loudspeaker trucks regularly roam city streets calling for the restoration of the emperor, dropped their act and used their trucks to deliver hot tea to stricken neighborhoods. This all happened as boxes of instant noodles donated by local merchants sat outside city hall in the rain, untouched and undistributed.

Surveying the post-quake landscape in April 1995, the then-editor of *Tokyo Business Today*, Hiroshi Fukunga, summarized a disturbing but inescapable lesson from the Kobe experience. "It now seems clear that even in a national emergency the nation's pen-pushers will not swerve a millimeter from official procedures, even if fellow citizens' lives are at risk," wrote Fukunga. "While the hours slopped by and thousands lost their lives in

In the name of empowering all affected parties, Japan's confusing system of property ownership has made rebuilding much more complicated than it needs to be. Landowners, building owners, and tenants must all agree before rebuilding can go forward.

the fiery ruins left by the Kobe disaster, Japanese officials' top priorities were observing protocol and following precedent."

Fukunga was absolutely right, but his analysis was incomplete. A major contributor to damage in Kobe had nothing to do with unresponsiveness *after* the quake. Rather, it reflected longstanding and popular governmental agricultural and land-use policies that have helped make housing and building costs in Japan among the most expensive in the world. These policies are intricately linked to Japan's valorization of a planned society that emphasizes the good of the community rather than the importance of the individual. They affected Kobe in two distinct ways. First, they encouraged construction of non-earthquake-resistant structures. Second, they created a confusing system of property ownership that, in the name of empowering all affected parties, makes rebuilding much more complicated than it needs to be.

Japan's historically intense concerns about agricultural self-sufficiency have led to generous price supports and other subsidies for farmers. Post–World War II land-reform efforts such as the 1952 Agricultural Land Act have "severely restricted land transfers, tenures, tenant rents, and so forth, in an attempt to prevent the concentration of land and to protect the welfare of tenants," notes Clark University economist Robert C. Hsu. Such policies, along with lower property and inheritance taxes on land used for food production, have encouraged farmers to continue farming, even though many do so now only part time.

There is a more perverse unintended consequence to such protectionism, however, one that bears directly on Kobe: In urban areas widely recognized as the most expensive housing markets on the planet, significant portions of land are still set aside for growing crops. Indeed, some analysts estimate that as much as 5 percent of Tokyo, a city known for its dense population and tiny living quarters, is set aside for farming. In *Japan: Who Governs?* (1995), Chalmers Johnson, president of the Japan Policy Research Institute, points out that Tokyo's 23 wards have about 62,000 acres of housing land on which 8.35 million people live. He notes, however, that there are about 89,000 acres of urban farmland in greater Tokyo, which includes the city proper and surrounding suburbs. Farmers are not the only Japanese property owners who hold land, either. One newspaper reports 116,000 acres of vacant land or "areas used only for open air storage spaces" in the country's three largest urban areas (Tokyo, Osaka, and Nagoya).

Over the decades, such policies have removed large amounts of land from the market and spurred development of "reclaimed land," or man-made islands, especially in coastal cities such as Kobe. In fact, Kobe's port facility sits on Port Island, an artificial land mass linked to the mainland by rail and expressway. Nearby Rokko Island, a commercial and residential area, was created by transferring large sections of the Rokko Mountains into the sea. According to a report by EQE International, a highly regarded earthquake and seismic engineering firm based in San Francisco, such land is "the worst soil possible for earthquakes" and added greatly to the quake's damage.

The way in which Japan's property laws obscure ownership, and hence retard rebuilding efforts, similarly surfaced in the aftermath of the quake. Partly as a reaction to extravagant land-sales taxes, it is common for the land under any given structure—say, a high-rise condominium—to consist of several plots owned by different owners. Given the constraints of the system, this sort of cooperation makes perfect sense. It allows the development of property without taxable land sales. When it comes to severely damaged or destroyed buildings, however, cooperation becomes much more complicated. In the wake of the Kobe quake, these two levels of stakeholders—landowners and building owners—have had great difficulty agreeing on whether or how to rebuild. In some cases, notes attorney Toshifumi Motohara, a high-ranking member of the Restoration Committee of the Kobe Bar Association, it is often exceedingly difficult just to locate all the relevant owners: "They may be from different places in Japan. Or they have passed land ownership on to their children who have long ago moved out of Kobe."

The situation is more complicated still. In the early 1920s, lawmakers concerned that rapid urbanization would lead to massive homelessness adopted legislation giving strong rights to tenants, including businesses. Current laws specify that when land or a building change hands, the new owner must accept the current leaseholders or tenants for 10 years under the terms of any existing lease or contract. Tenants, then, represent a third level of stakeholder that can bring redevelopment plans to a halt.

Of course, such a situation does not stymie all development. In some cases, says Motohara, particularly in Kobe's Mano district, there have been few problems reaching consensus on rebuilding decisions. That community suffered less than some others and has a more extensive history of neighbors working together. In recent years, for example, Mano residents formed

a community group to protect and expand existing parks and "green" areas by forging voluntary agreements between homeowners and area industry leaders. That kind of experience paid off after the quake. Residents worked together to put out fires and rescue victims trapped under collapsed homes, while in other city districts people sometimes waited stoically for help from official fire and rescue services which never arrived.

Rebuilding in still other cases, Motohara reports, has begun after developers bought out some landowners or leaseholders willing to sell.

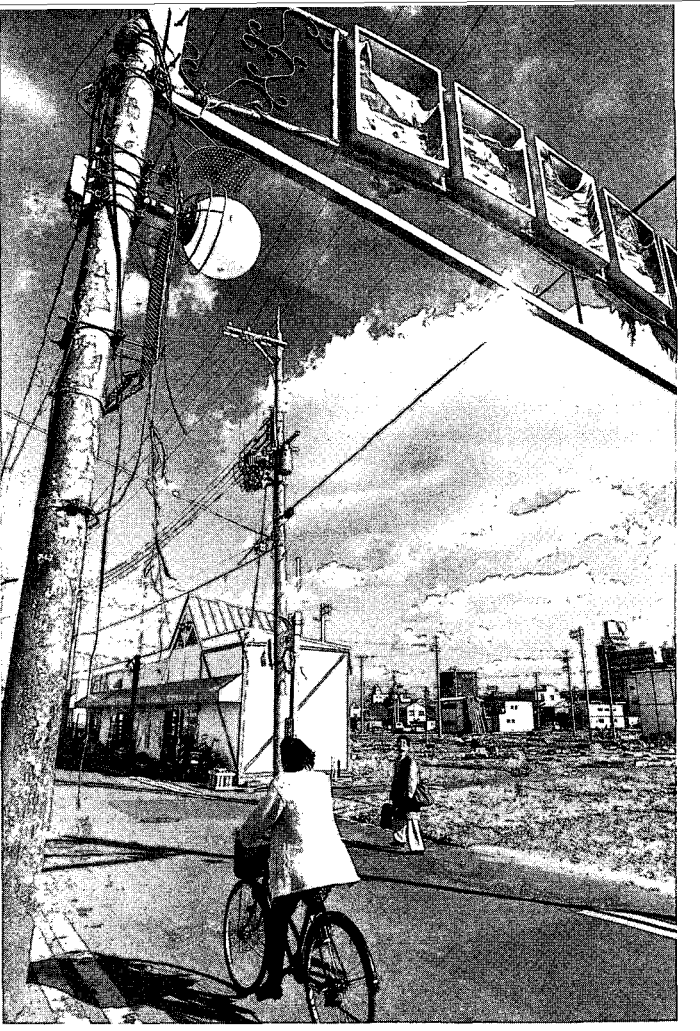
But in the typical case, the legal framework greatly increases the compensation required to satisfy an objector. Partly due to strong tenant rights, landlords in Japan demand up-front payments for securing an apartment (a similar phenomenon exists in rent-controlled cities in the United States). Those payments raise the cost of moving, which in turn raises the cost of a buyout, which in turn raises the cost of development.

Such laws create enough problems during economic booms, all the more so in the wake of an earthquake. Japanese authorities have made a difficult situation even tougher by invoking the Afflicted City Rented Land and Rented Housing Temporary Processing Law, a post-war measure originally designed to boost protection for tenants of buildings destroyed by Allied bombing campaigns. The law made it virtually impossible for owners of bombed buildings to use destruction as an excuse to cut ties to current tenants and then rebuild a structure serving a newer, presumably more profitable, purpose. The government invoked the law in the Kobe area a month after the quake. If an owner does not wish to rebuild a damaged building, the law effectively transfers ownership to the tenants. Renters have up to two years to request the rights transfer and a third year in which to start construction before losing their rights.

The effects of these various policies add up. Privileges handed to farmers, tax advantages granted to landowners, other tax policies toying with the timing of land sales, and protection granted tenants all have hugely increased the transaction costs involved in rebuilding Kobe. In any one block, says Osaka University economist Tatsuo Hatta, "a very large number of people have various property rights concerning land ownership, house ownership, land lease, house lease, or mortgage. It is not easy to assess the market value of each right." Indeed, such tinkering greatly complicates decision making in a situation where flexible, creative decisions are critical to rapid recovery.

Despite the regulatory web, many areas in Kobe are being rebuilt. Much of the damaged infrastructure and big business property has already been repaired or rebuilt. A March survey by the Kobe Chamber of Commerce reported that about one half of its membership had recovered 70 percent to 90 percent of pre-quake business. Another quarter of the membership had recovered 50 percent to 70 percent. Cargo volume at Kobe Port recently reached 70 percent of former levels.

For the area's large industries—steel, auto parts, shipping, and tourism—rebuilding has been expensive but possible. No one, for instance, doubts who is responsible for reconstructing the Daimaru department store downtown: Daimaru. The same



Where property rights were clear, recovery projects benefited from the abilities for which Japanese managers and workers are renowned. Much of the damaged infrastructure and big business property has already been repaired or rebuilt.

holds true for the restoration of basic infrastructure. Transportation and utility services, as well as general cleanup (which the national government agreed to pay for), progressed fairly smoothly.

Where property rights were clear and generally unmarred by political policies, recovery projects benefited from the abilities for which Japanese managers and workers are renowned. But for another group of earthquake victims, recovery came to a stop before it even had a chance to begin. These are the more than 27,000 families who still live and work in temporary shelters. They are former residents of Kobe's older neighborhoods, areas with tiny, narrow streets and old, wood-frame homes which EQE engineers witnessed "burning freely."

In March 1995, not even two months after the quake, government officials announced the initial version of the Hyogo Phoenix Plan. (Hyogo Prefecture is the state-level government for which Kobe is the capital city.) Though surrounding areas also suffered quake damage, particularly in neighboring Osaka Prefecture, Hyogo cities and towns bore the heaviest shaking and devastation. Expanding on a pre-quake, area-wide development plan, officials packaged an ambitious series of projects spread throughout the prefecture. Hyogo Gov. Toshitami Kaihara introduced Phoenix as a plan designed "not only to restore the region to its pre-quake condition but also to solve underlying

It's virtually impossible to coordinate redevelopment in Kobe because a workable system for decision making based on underlying property rights no longer exists. The result is massive confusion about who will own what and who will live where.

problems faced by Japan, such as an increasingly aging population, the need for an open economy, and the concentration of problems associated with increased urbanization around the world."

The specifics constitute a city planner's wish list: well-aligned high-rise housing structures with shopping plazas at their bases; parks stretching and weaving between buildings; museums devoted to art, "disaster science, health care and science, technology and culture"; an "EDUMENT" center hailed as an "intellectual theme park"; an arts and culture center; a housing center for students; an international multimedia and entertainment city in Kobe, along with the Higashi Harima Media Garden City in Miki; a Super Convention Center; an Import Mart; and an International Garden City "founded as a communication city to promote exchange between people and cultures from Japan and abroad."

How such plans square with the "need for an open economy" has yet to be explained. Imagine a giant square of city land, cleaned up from the earthquake and supporting temporary structures for residents and businesses. Planners want to wipe the parcel clean and begin again, with wider streets, open parks, and high-rise apartments. That means using more common public land than before, which in turn means taking land from private owners. Specifically, the government has earmarked 11 percent of currently private land for takeover via the Japanese equivalent of eminent domain. (Because so many communities are balking at turning over land, the final amount will likely be closer to 7 percent.)

The city has declared it is up to citizens to "decide what they want," according to Kanemitsu, the Kobe city official. Who gives up how much of what, however, is far from clear. Some citizens may sell off or contribute all of their land for city use. Others may contribute only a portion of their land. Whatever land is left for private use will then be reallocated among those residents wanting to stay and rebuild for themselves.

In the hardest hit areas, 49 community councils were established to help facilitate these "land readjustments." Organized by local residents and chaired by community leaders, these councils orchestrate the give-and-take discussions necessary to develop a broad-based consensus on an adjustment plan. And most now have been successful—at least at producing something formal to present to city officials. But the process has taken two and a half years or more—enough time to make compromise appealing to nearly anyone.

While the Phoenix plan is supposed to speed up the process, it has stalled recovery in two ways. First, it has essentially eliminated incentives for private, market solutions. Though it's difficult for people to acknowledge, the government has become the de facto owner of large chunks of Hyogo land. Individual residents still retain title, but the city and prefectural governments get the final word on what can be done with any given piece of property. That effectively squashes any interests private firms might have in buying out current landowners or in making their own plans for private development. Moreover, developers know their easiest money comes not now but later, when the *dango* system—a rigged bidding process that rotates project winners through the ranks of leading construction firms—distributes contracts for all those museums and the intellectual theme park.

Second, the Phoenix Plan has thrown everyone into the same basket, effectively collectivizing decision making. It has forced everyone in any given neighborhood to come to an agreement about the outcome (land transfers and redistribution) before rebuilding can begin—while simultaneously making it nearly impossible for people to make rational decisions until they know much more about the eventual outcome.

"Everyone has their own problems, but the government wants us all to do the same thing," lamented Yuji Yamada, whose fruit shop was destroyed, along with everything else along two blocks of Taishosuji Street in the Futabacho district of Kobe's Nagata Ward. At 73, Yamada cannot see a future for himself and his business in the new neighborhood the government has planned. He has rebuilt a temporary structure; business is back to 50 percent of pre-quake operations.

"They [government] just want beautiful streets and beautiful cities," Yamada complains. "That's all the government is thinking about—making wide, beautiful streets and parks. But we don't want that." His corner location is very likely to be trimmed so much that he won't be able to rebuild an adequate permanent business there. Or it might simply be taken away from him altogether as the neighborhood reallocates all the plots. Yamada doesn't want that, but others do.

Residents naturally face different situations and have different preferences. Some have savings while others struggle to make mortgage payments on buildings which no longer exist. Some want streets 17 meters wide while others prefer streets 13 meters wide. Some want new covered shopping arcades imitating the old ones while others want to try their luck in the plazas at the bottom of planned high-rises.

It's virtually impossible to coordinate redevelopment because a workable system for decision making based on underlying property rights no longer exists. Kenichi Miyamoto, a professor in the College of Policy Science at Ritsumeikan University in Kyoto, put it in more oblique, but typically Japanese, terms: "Housing recovery has been slow mainly because there is no guarantee of individual property assets." The result is massive confusion about who will own what and about who will live or conduct business where.

The Phoenix plan has also necessarily politicized the process, and citizens have responded accordingly. One district split into three disagreeing groups, based largely on the different damage sustained by three different neighborhoods. While those differences may seem trivial given the scope of the redevelopment plan, each group obviously hopes to obtain more government favor than other groups. It's worked in some cases. One neighborhood group managed to get government planners to agree to scale back street widths by 20 percent.

Though the city has offered the fruit vendor Yamada and others space in new retail plazas in exchange for selling all their land now to government authorities, this hasn't helped. "I don't want to sell to the government," Yamada says. "The price is too low. I can't sell to them." Yamada claims the price the government has offered is only one-fifth the market price. City officials claim the prices offered by the government are reasonable, established by a council of neighborhood representatives, real estate professionals, and other experts.

Given Japan's larger land-use policies and Kobe's specific situation, it's virtually impossible to say who is right: The information flow upon which prices are based is hopelessly dammed up. Moriaki Hirohara, president of Kyoto Prefecture University, has studied the recovery issues and acknowledges the general problems created by government redevelopment plans. "The price the government is offering is not so unreasonable," he says. "But there is a big gap between what citizens expect and what the real value of the land is." Given the circumstances, how is the real value of this land determined? "That's a difficult question for these designated areas, of course, because there are not really good market mechanisms operating."

Hisae Miyamatsu, 69, ran a 100-year-old family hat business in a three-story building in the same neighborhood as Yamada. The building burned in a post-quake fire. In late 1995 Miyamatsu and her husband moved their business into a tent, along with several other former shop owners and a small branch of the supermarket chain Daiei. Like the fruit shop, the hat shop is back to around 50 percent of its former activity.

Miyamatsu and her husband like the idea of moving into a new space at the bottom of a high-rise filled with potential customers. But so far she cannot make sense of the economics. "If we accept what the government offered us [for the land they own in the neighborhood]," she says, "then we must move to the new building and we cannot afford the rent there." She has an artist's sketch of the new place—a high-rise with lower levels devoted to retail businesses. Trees in front qualify it for the "green" label that is trendy in Japan. Miyamatsu is not even sure yet what the rent will be, yet another indication of the degree to which uncertainty dominates lives here. "It depends on how many other people accept the government's plan," she explains. "If there are 20 [businesses] then it will be one level. If there are 10, then it will be another level."

Like Yamada, Miyamatsu neither understands nor cares much how government policies are distorting market mechanisms. Ideology plays no real role here. Many of the residents, in fact, would prefer government do more (that is, give them more money) rather than less. They know they are in a mess, and they know government has something to do with it. But they also have been led much of their lives by government policy—from what textbooks to read and tests to take, to why domestic apples are good for them and why the imported ones are not. They are frustrated and confused.

Rather than serve as a lesson on the unintended consequences of government control, for many Japanese the destruction in Kobe and the slow pace of recovery justifies even more government intervention. Their attitude suggests how difficult it is to persuade people that such intervention is not necessarily the only or the most efficient way to accomplish communal goals. Few residents doubt the wisdom of widening the streets or of moving older and lower-income households into modern high-rise facilities; fewer still doubt that this is exactly the type of activity for which government is best suited.

City official Kanemitsu prefers to believe the government's role is limited to traditional infrastructure activities. "In some areas," Kanemitsu says, "the citizens have prime responsibility, particularly in rebuilding their private homes. We [the city] are responsible for infrastructure. But of course, for private homes, we cannot [become involved in rebuilding]." He does not see, however, that after announcing the Hyogo Phoenix Plan, government effectively became the dominant factor in all private decision making.

The stultifying result of state intervention is summed up by Miyamatsu, the hat shop owner. "We don't want to accept the government plan. But we can't decide to rebuild yet, either. So we are just doing nothing," she says.

Miyamatsu's predicament underscores a second, ongoing tragedy in Kobe, one less natural than man-made in origin, and one directly related to the very policies that once made Japan a model of efficiency: Three years after an earthquake, displaced victims have resorted to "just doing nothing." Such an outcome is disturbing, but it is exactly what you should expect from a rigid administrative system that was one of the few things that didn't shudder and crumble in Kobe during the early hours of January 17, 1995. ◆

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BY BRIAN DOHERTY

STONED IN SANTA BARBARA

A family-owned quarry business is no match for determined bureaucrats.

The Santa Barbara County Courthouse, a stately, Moorish structure dating from the 1920s, is one of the county's better-known landmarks—there are even guided tours for architectural sightseers. True to its period, much of the courthouse exterior is covered with carved stone: figures of lions, peacocks, mermaids, sea gods. In the shade, the building presents an imposing dignity. But it is in the sun that the old stone is at its vivid best, its antique menagerie alive in the light. Over one archway are etched words that seem to lend the building voice, too: "God gave us the country. The skill of man hath built the town."

Seventy-five miles northeast of the building, in Santa Maria, there are still men with the skills that built Santa Barbara and its courthouse. One of them is Hank Antolini, the son of Italian immigrant Giovanni Antolini. It was old Giovanni who supplied the stone and supervised the work on the courthouse. Stone had been his own father's craft, and *his* father's before him, curling back through centuries in Italy. Now Hank, Giovanni's son, and Paul, his grandson, carry on the trade. "Stone," Hank Antolini says, "is the only thing that lasts. History couldn't be written without stone."

In 1953 Hank found a nearby deposit of the rare and coveted Santa Maria stone, a type often requested by Frank Lloyd Wright and still used by architects in custom work. The Antolinis today restrict themselves to mining that deposit, located about 30 miles from and 3,000 feet above the city of Santa Maria, surrounded by the Los Padres National Forest. Hank and his son dig into their land, Colson Quarry, themselves; their five workers are driven to and from work every day by Paul, and enjoy both profit-sharing and pension plans.

"If you want to keep all the money yourself," says Hank, a compact, sun-leathered man of 73, "you have to do all the work yourself."

But G. Antolini & Sons may soon have no work for anyone. Santa Barbara County planning officials have been conducting an unrelenting regulatory crusade against the Antolinis for years, and the Antolinis aren't confident it will end until they are forced to close their mine. They've been struggling to keep afloat on a sea of extremely expensive bureaucratic requirements—report after report, plan after plan, hearing after hearing—while attempting all the while to run their small business. "It makes running your business like fighting a guerilla war," says Paul, Hank's 35-year-old son. "You never know what they're going to hit you with next."

ALL PHOTOS: BRIAN DOHERTY

In September, the Antolinis went before county officials in their fifth attempt to gain approval for an essential "reclamation plan." Paul anticipated difficulty. "Given the county's past actions," he said beforehand, "I don't expect any easy settlement."

The Antolinis' problems began in earnest when the land became theirs. For decades they had worked it as Forest Service land, under Forest Service regulations. Hank remembers the regulatory management as calm and commonsensical. He had no problem with the Forest Service, and the Forest Service had no problems with him. "All information indicates that Antolini has been an exceptionally good permittee...always responding to Forest Service requests," reads a 1978 report.

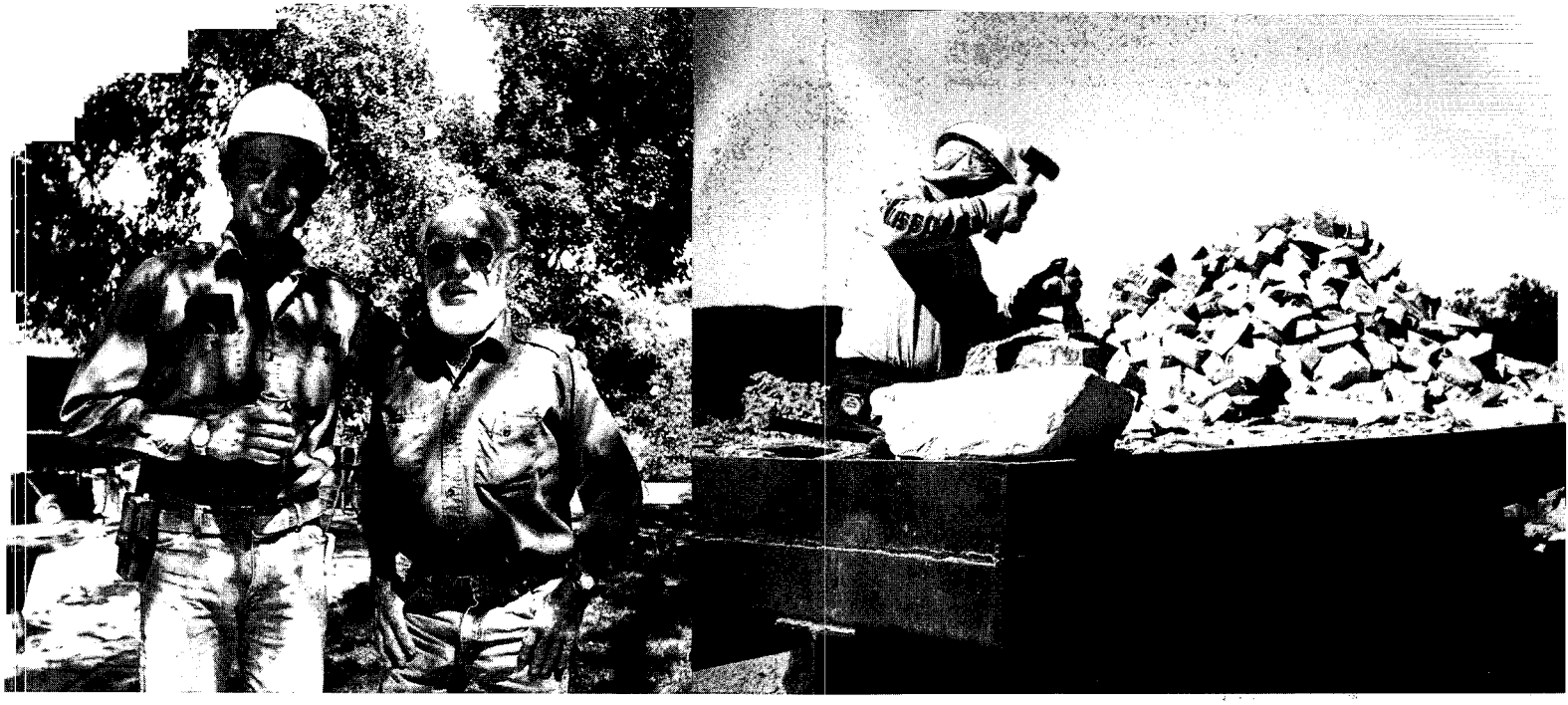
But when the Forest Service's attitude toward extraction industries began to harden in the 1980s, the Antolinis decided to file a patent claim under the 1872 Mining Act. That law shifts ownership of land from the government to citizens who discover and work a valuable resource.

Some have characterized the Mining Act's patent provision as an easy giveaway to mining interests, but don't try to tell that to Hank: Gaining the patent was a legal ordeal that lasted from 1986 to 1995. Even after a judge finally decided in the family's favor, it took Interior Secretary Bruce Babbitt a year just to sign the necessary paperwork.

When ownership finally passed to Hank, the regulatory responsibility passed to Santa Barbara County. The county was once home to big extraction industries—lots of oil companies used to work out of Santa Barbara—but the county government now seems intent on creating an environmentalist haven. The Antolinis aren't the only ones feeling the anti-business squeeze.

Santa Barbara County is a place where trying to build a luxury hotel can lead to a 15-year approval and lawsuit process; where constructing a McDonald's camp for cancer-stricken kids can be halted by strict permitting conditions; where even greenhouses and raspberry farms are considered an industrial blight.

"Santa Barbara has a bad reputation with business, and they deserve it," says Andy Caldwell, the executive director of the Coalition of Labor, Agriculture, and Business (COLAB), a local organization that keeps track of county regulatory doings for its 1,000-plus member businesses. In fact, the CEO of Chevron, a



Paul Antolini (left) and Hank Antolini. An Antolini employee hand-works a piece of decorative stone.

company with a long history in the county, once compared doing business there to the extortionate oil practices of post-Soviet Russia. "The Russians are difficult to deal with," he told *Fortune* magazine. "But, heck, it still beats trying to do business in Santa Barbara County."

"Whether it's building houses or hotels, or trying to harvest some rock like the Antolinis, they've created this convoluted process whereby the planning staff requires all manner of analyses that take time, energy, and money," COLAB's Caldwell says. "Every aggregate rock producer in the county belongs to my organization, and they all get grief."

County officials, he charges, regard the land, flora, and fauna as their real clients, not the businesses that are trying to slog through the expensive approval processes. "They tend to see the land as a community asset, not something that should be owned or subject to exploitation for individual profit," Caldwell says. "Santa Barbara's government also has this elitist attitude: We want gas cheap, but not off our coast. We want beautiful decorative rocks adorning our courthouse, but don't mine off our mountains. And now that we've got a place to live, we don't want anyone building new buildings to move in."

Part of the Antolinis' long struggle concerns how much of their land they can actually mine. The county originally denied them "vested right" to mine the entire claim that they now own. Although the county later backed down and recognized their right to their 200-acre patent (Hank had originally applied for over 1,000 acres), it restricted the Antolinis to mining only two portions—about 34 acres. That is losing them business because they can't keep up with demand. Without the approved reclamation plan—the one they have failed to obtain numerous times, and which they were seeking in September—the county considers itself merciful for allowing them to operate *any* portion of their patented land.

To get the patent claim, the Antolinis had to convince a federal judge that they had a unique and profitable product that they had been working for years. The "profitable" part was a sticking point. "What the state, county, and Forest Service were trying to do," Paul believes, "was use the regulatory process to drive up costs, by such things as limiting where we could put overburden [waste rock from the mining process], to render the operation uneconomical and drive us out of business.

"We used to push our overburden west, but the Forest Service said we can't have that since it might be seen from some campgrounds on that side. Then they ordered us to push it to the east, but then there was a landslide there." Now the Antolinis must keep their waste on-site, within lines determined by the county. That means the crew must work around their own waste rock, making mining slower, tougher, and much more expensive.

"We're being strangled to death," Hank says. "You can't work here, you can't work here. If you get stuck in the middle of a big job and can't dig up the material to finish it, you can get blackballed in this business."

The Antolinis point to a memo from a 1990 meeting of county officials that they say suggests a plan to squeeze them out of business. It says, cryptically, that the county must "determine what reclamation we want. It will significantly affect the patent application (mining cost)." While open to interpretation, the wording indicates that regulators knew that their approach to the Antolinis' reports would have a serious impact on the company's costs.

The long list of studies that the Antolinis have been required to undertake dates back to an environmental assessment done under the Forest Service in 1978 and now fills a page and a half: revegetation plans, biological evaluations, paleontological studies, visual analysis reports, air quality reports, another environmental assessment, a plant survey, a biological survey, a soil fertility analysis, two mineral reports, engineering and geological reports, a geotechnological engineering review, a landslide monitoring plan, a moisture/density test, a volume expansion

analysis, a slope stability analysis, and, yes, even more. The total legal and professional costs racked up by the Antolinis stand at nearly $700,000—and counting.

But for now their battle to survive has come down to getting approval for the reclamation plan. Under California's Surface Mining and Reclamation Act of 1975, all mines are supposed to have an approved reclamation plan in order to operate. (In practice, anyone pursuing an approved plan in good faith is usually allowed to continue operating.) Such a plan describes how, after mining is finished, the operator intends to restore the land to some use other than a hole in the ground.

A good reclamation plan requires the services of geologists and engineers, and is very expensive to prepare. The Antolinis have prepared a lot of them: a May 1990 reclamation plan, a May 1996 reclamation plan, a January 1997 reclamation plan. That's $330,000 worth of required reclamation plans alone. Now there's the new reclamation plan under consideration in September and its costs as well.

But the expense that causes the Antolinis the most heartburn is the approximately $50,000 in fees they have paid the Santa Barbara County planning staff for processing their applications—or, as Hank sees it, paying the county officials for their so-far unsuccessful efforts to close his business.

The Antolinis have concluded that someone on the county's planning staff has it in for them. Indeed, there have been three attempts by the planning staff to close the mine, though the full Planning Commission, which has to authorize any mine shutdown, has yet to agree to do so. Hank insists that county geologist Brian Baca even told him, on his first visit to the quarry, that he intended to shut it down; that the Antolinis would drown in their own overburden because of restrictions on where it could be placed. Baca denies making any such comments.

A federal mine safety inspector was also sent to find hazards at Colson Quarry and couldn't. Robert Montoya, a Mine Safety and Health Administration employee, remembers being told, when he said he found no safety threat to the county, to "go up there and find something."

And once, when the Antolinis submitted a plan requesting interim access to two portions of their patent currently off-limits to them, Baca sent the limited plan out as if it were a reclamation plan for the entire quarry. That resulted in long letters from the planning and development director tearing the plan to shreds for not doing what it was never meant to do.

Baca insists he is not hostile to the Antolinis; he says the county is just trying to make them comply with the law. For his part, he doesn't understand why they keep spending tens of thousands of dollars on shoddy reclamation plans.

But whether such plans are adequate is up to the planning staff, which is free to exercise a great deal of discretion. "If you give them 10-foot topographical lines [on a map], they'll decide they want five-foot," says Hank. There is no objective standard. "Whatever you submit, they find a way to throw it back," says Paul.

A geologist who has worked on the last couple of Antolini reclamation plans, Ray Coudray, was once a senior engineering geologist for Santa Barbara County. He considers Baca too inexperienced with mining and unfairly niggling about this particular plan. Coudray has worked on reclamation plans for operations 10 times the size of this one, with less than a third of the information, and has seen those plans pass.

The main conflict between the mine and the county concerns landslides. County Supervising Planner Greg Fuz thinks that the Colson mine poses a danger to the surrounding land, mostly because of a 1995 landslide off the quarry's east slope.

Under Forest Service direction, the Antolinis had been putting their waste rock there. All sides agree that the quarry is in a naturally landslide-prone mountain area. Given that, and the enormous rainfall and earthquake aftershocks preceding the 1995 slide, Hank's geologists believe it's wrong to blame the Antolinis for the slide. The county's position is, given a landslide-prone area, why exacerbate the problem by dumping mining waste?

The county refers to the 1995 landslide as "catastrophic" in a memo. "There were no lives lost," scoffs Coudray, "no use embellishing it with the superlative of *catastrophic.* It was just a large landslide." It pulled down a bunch of live oak, which the Antolinis will be replacing, and sent rubble down a slope where no one lives or works. Hank's engineers and geologists have done

Certain items do seem to indicate ill will on the county's part. A federal mine inspector was sent to find hazards at Colson Quarry and couldn't. A Mine Safety and Health Administration employee remembers being told, when he said he found no safety threat to the county, to "go up there and find something."

However, there are certain on-the-record items that do seem to indicate ill will on the county's part. One is a letter to an Antolini lawyer from the Forest Service during his patent application. The contents of the letter boded ill for the Antolinis' claim, and a county planning official attached a sticky-pad note reading, "the thumbscrews continue to tighten."

County planning official Baca also has sent inspectors to the quarry, looking for public health and employee safety problems, without informing Antolini. A county building official, Frank Breckenridge, was sent to look for "an imminent hazard" at the mine, but found that "the engineering hazards could not be classified as an imminent threat to public safety."

extensive slope stability tests that involve boring two-foot-diameter, 80-foot deep holes in the area where they now intend to dump the waste rock. They think those tests should adequately answer any concerns the county might have about the ground's stability.

The county says the landslide filled a "blue line creek"—so-called because it appears as a blue line on maps. Coudray says that there is no such classification except in the minds of the county's planning staff. It's merely a drainage ditch that fills with rain water. When it gets blocked, the water either soaks in or flows around. No damage is done either way.

The three-volume reclamation plan prepared for the September hearing, said Coudray, was the most detailed he'd seen in his career. He predicted that the planning staff, when presenting their case to the commission, would have to do a lot of digging to find any problems.

The September meeting on that plan was nine grim hours of testimony, counter-testimony, and one threat to call the police on COLAB's Andy Caldwell. The county's planning staff, represented by Brian Baca and Greg Fuz, argued that the plan wasn't even complete enough to be considered, and they did sufficient digging to put the Antolini family back into a bureaucratic hole: This fifth attempt at filing a reclamation plan was rejected.

The irreconcilable differences between the planner/environmentalist world view and the miner's were on clear display at the meeting: A commission member professed bafflement at why the Antolinis wanted to take so much rock out of the ground at all. Letters were read aloud from local environmental groups begging the commission to end the mine-created "blight" on a single mountaintop among the hundreds in Los Padres. The planners demanded to know in excruciating detail exactly what the mine would look like at every point between now and 2020. How, the Antolinis wondered, were they supposed to answer such questions? They had no idea what their orders would be in, say, 2006.

The Planning Commission members made it clear that they didn't understand much of the extensive and technical testimony, but they concurred with their staff. In recognition of the Antolinis' manful attempts, however, they didn't declare them in violation of the law. Instead, they demanded that Hank come back in three months with yet another reclamation plan. A sixth.

The Antolinis are now being fined $10,000, plus $500 daily, by the state for operating in violation of mining laws. Hank is appealing the fine, which is based on not just the lack of an approved reclamation plan but also a difference over the proper amount of interim financial assurance—money Hank has to leave with the government to cover reclamation if he abandons the property.

But even if the Antolinis eventually get a reclamation plan approved, more regulatory hurdles await them. The next step would be an environmental assessment, which can either give the site a clean bill of environmental health or lead to a full-fledged environmental impact report.

Mining is a threatened occupation. It has become easy to forget that, as Hank puts it, "Everything we have comes from the earth." Fred Smith of the Competitive Enterprise Institute has been watching mining come under regulatory attack for years. "In modern society most people have no understanding of what goes on at the basis of our industries that gives us all the things we want and need," he says. "By being so efficient, extraction industries have made themselves *politically* irrelevant. Americans think metal comes in nails and sheets, and oil from pumps. We want the beautiful penthouse apartment without having the foundation for the building."

And if the mining industry as a whole has become small and efficient enough to lack significant political clout, a seven-man family operation like the Antolinis' is particularly vulnerable. Their lawyer, Steven Kirby, has represented most of the big mining and oil companies that have attempted to do business in Santa Barbara. "They treat most operators badly, but they've treated the Antolinis worse than most. With big companies, you can only go so far and they have the resources to say 'enough's enough.' It's harder for a family operation. The process of trying to defend your rights can kill you."

County officials "treat most operators badly," says the Antolinis' lawyer. "But they've treated the Antolinis worse than most. With big companies, you can only go so far and they have the resources to say 'enough's enough.' It's hard with a family operation. The process of trying to defend your rights can kill you."

Yet Hank, unable to buy new equipment for eight years, unable to take his own salary from his company, and forced to spend more fighting off regulators then he ever had to spend on mining, has no intention of giving up. All his life Hank has been engaged in a romance with stone, working with pride passed down from his father, and to his son. "I'm a little past 39," Hank says with grim understatement. "What else am I going to do?"

If it's any comfort to him, every letter he gets from the county ordering him to spend more money or threatening to shut down his life's work is emblazoned with the county's emblem: its courthouse. Standing proudly, dressed in Antolini stone.

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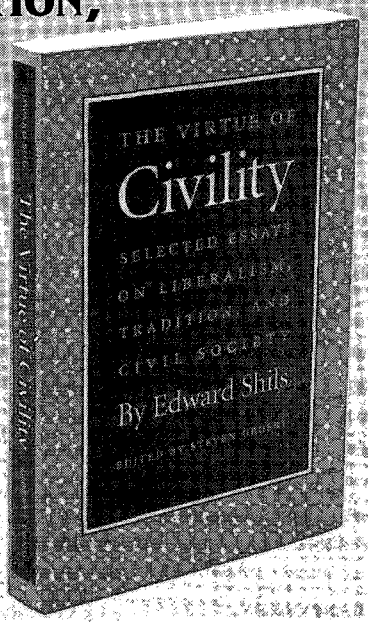
THE VIRTUE OF CIVILITY
SELECTED ESSAYS ON LIBERALISM, TRADITION, AND CIVIL SOCIETY

By Edward Shils
Edited by Steven Grosby



Edward Shils (1920–1995) was one of the leading intellectual defenders of freedom in the twentieth century. Learned in history, politics, literature, economics, theology, and legal history, he taught for many years at the University of Chicago's Committee on Social Thought and at Peterhouse College, Cambridge. In these nine essays, Shils explores the importance of civility and tradition to a free society. The essays' significance is enormous, for Shils was one of the first and assuredly one of the most courageous writers to examine the natures of civility and civil society and their relation to a free, ordered, liberal democratic society. As H.R. Trevor-Roper has written, "Deeply concerned for the Western values of rationality, freedom, and progress, Shils was dismayed by the threat which they now faced: the threat posed by the absolute individualism into which Western Liberalism had degenerated." Among the essays are "Tradition and Liberty: Antinomy and Interdependence," "Max Weber and the World Since 1920," and "The Modern University and Liberal Democracy."

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Their Own Petard

Fans of activist litigation discover the other guy can sue too.

By Walter Olson

Any enumeration of surviving pterodactyls in op-eddom would have to accord a high perch to *The New York Times*'s Bob Herbert, whose form of class-warfare rhetoric was already wearing thin in the days of Harry Truman. "The Republican jihad against the poor, the young and the helpless rolls on," wrote Herbert in February 1995. "The United States has entered a nightmare period in which the overwhelming might of the Federal Government is being used to deliberately inflict harm on the least powerful people in the nation."

Having wrongly forecast that NAFTA would be the ruin of American workers, Herbert at the end of 1994 saw disaster ahead for the nation's cities as well: "When the next Congress is sworn in the Republicans will resume their war on urban America with a vengeance.... 'You will see that this will be a dark time for the cities,' said a high-ranking national Democrat, who asked not to be identified," which was in retrospect prudent of that high-ranking personage, since American cities were about to enter their biggest renaissance in decades.

Usually the only surprise in a Herbert column is that his editors once again failed to tone down the vehemence, but one of his columns this October did deserve wider notice. It showed the beginnings of a new skepticism on the important subject of lawsuits as a vehicle for social change.

In the familiar model of such a suit, ideologue-lawyers line up a sympathetic client and sue a government agency or other institution with the aim of securing new legal doctrine that will apply in many other cases—in effect, aiming a lobbying campaign at judges rather than legislators. What is "particularly perverse" about this process, Herbert now writes, is that "the case is argued from first to last by representatives of the plaintiff and the institution." Other persons whose rights and obligations will be profoundly affected by the case's outcome have "absolutely no say," being "shut out of the proceedings."

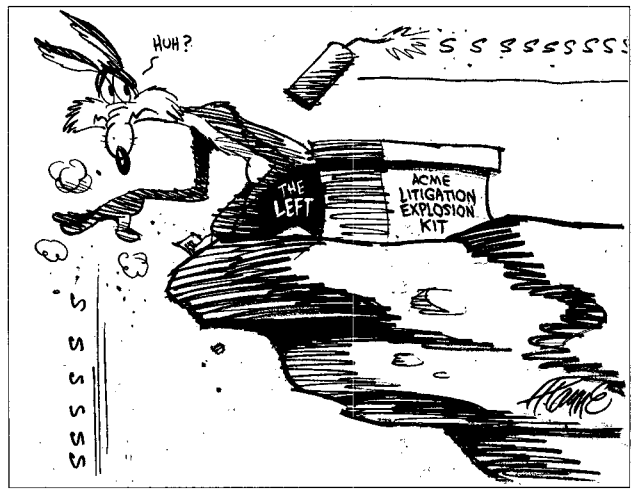
Moreover, a well-organized offensive team can pick and choose its issues and where and when to sue, while the sued defendants scramble to react. "Often they are lawyers representing government agencies, school boards or universities. Their cases are not coordinated and there is no overall strategy. And when they lose, they often appeal willy-nilly, without due consideration of their likelihood of success, or of the much wider effect that an adverse higher court ruling can have." To make matters worse, the lawyers defending the institutions "are not necessarily strong believers...themselves" in the policies under attack. In short, social-reform lawsuits are neither a fair nor a neutral way of obtaining sweeping changes in policy.

What accounts for Herbert's hard-won wisdom? Funny you should ask. It turns out he has come up with this critique in reaction to the success of conservative and libertarian opponents of affirmative action who've been challenging racial preferences in cases like *Taxman v. Piscataway*. He says nothing about applying the same critique to 30 years of liberal reformist lawsuits demanding system-wide school busing and school-finance equalization, judicial takeovers of prison systems and social-service agencies, or even suits in which a single New Mexico jury second-guesses the temperature at which McDonald's coffee can be served in every other state. When Herbert next writes about those topics, we can expect him to show new concern for the bystanders in litigation—students in schools deemed "too good" in so-called Robin Hood funding cases, shopkeepers robbed by prisoners freed pursuant to overcrowding orders, buyers of January New Hampshire take-out coffee who'd rather get it hot and take their chances. Right?

Whether or not that happens, when even Bob Herbert begins to express doubts about the ideology of Better Living Through Litigation, you know it's in trouble.

Social-reform litigation is thriving these days in Egypt, of all places, but it emanates from an unexpected quarter. According to a *Wall Street Journal* news account, a cadre of Islamic-militant lawyers have "filed countless lawsuits against Egypt's government ministries and leading cultural and intellectual figures to get *sharia*, or Islamic law, implemented."

In one of the best-known such lawsuits, militants invoked the right to sue on behalf of "God's rights"—an officially recognized concept in Egyptian law analogous to the progressive American law notion of "citizen standing"—and secured a ruling branding Professor Nasr Hamid Abu-Zaid a heretic on account of his "perverse," "atheistic" view that some Koranic passages were best interpreted metaphorically. The court proceeded to order Abu-Zaid to divorce his wife, who wished to remain married to him;



HENRY PAYNE

the couple fled to the Netherlands. Other suits have succeeded in restoring the controversial practice of female genital mutilation/circumcision (choose your own term) and in securing bans on numerous movies and books deemed insufficiently respectful of Islam. "We have no guns, no bombs, no knives. We have only pen, paper, the law and the courts," one activist told the *Journal.* "Look what we've done with them." Indeed. We could compare notes.

Another *Journal* news account the same month suggests (at first glance) that the cause of legal reform may have picked up its most surprising convert yet: the Clinton administration. The story reports that the Clinton people are outraged that American companies have been victimized by excessive and arbitrary multimillion-dollar liability awards, many far out of line with the magnitude of the transactions being sued over, and, even more disturbing, based on retroactive application of law not on the books at the time the companies acted. Companies victimized in this manner have included Colgate-Palmolive, DuPont, and Procter & Gamble.

Could this be Janet Reno's Justice Department, which has stoutly defended our litigation lottery year after year? Of course not: It was the *State* Department, going to the mat with Ecuador over a series of what it saw as unfair laws and lawsuits in that small South American nation. Speaking with much candor, U.S. Ambassador to Ecuador Lesley Alexander referred to the widespread perception of corruption in the country's judiciary and said that a law retroactively curbing the termination of local distributorships "has been used to terrorize and extort foreign companies." Following complaints by many American companies, the U.S. Trade Representative's office proceeded to place Ecuador on its so-called priority list, and a threat of outright sanctions followed. The minicrisis ended only when the Ecuadoran Congress, perhaps sensing that it could not hope to win this kind of fight, voted to repeal the offending law.

And yet one doesn't have to look as far south as the Andes to find examples of courts willing to soak foreign companies, often through the use of novel or retroactive law. In Mississippi not long ago a trial lawyer demagoguing against rich foreign companies got a jury to vote $500 million against a Vancouver-based funeral home chain in a routine commercial dispute; the Loewen Corporation later settled for more than $100 million. A North Carolina jury recently mulcted the Meineke muffler chain for an estimated $400 million to $600 million, more than the annual profits of its large British parent company, after a lawyer invited jurors to "send a message to foreign companies." This September a New Jersey court ruled in favor of class-action lawyers suing Thorn PLC (formerly half of the Thorn EMI music group), the British parent of the Rent-a-Center chain, in a case that Thorn says might cost it $120 million. In 1995 a Texas court awarded $488 million damages, later settled for $36 million, in an anti-competitive practices case against British-owned ICI Explosives USA, the same company Johnnie Cochran tried to sue over the Oklahoma City bombing. The Germans at BMW headquarters must have scratched their heads over the Alabama paint-job debacle, while British-American Tobacco is among the potential corporate kindling in the retroactive bonfire known as cigarette liability. American trial lawyers casually busted Lloyd's of London, no easy feat, by getting retroactive changes in asbestos and environmental liability.

The Canadian press buzzed with indignation for months over what happened to Loewen, just as the British press has over British-company cases. Britain's *Commercial Lawyer* magazine says the Meineke case signifies that in America plaintiffs can "successfully argue that the contract requires the opposite of what it states."

"The U.S. has, without comparison in the developed world, the highest degree of systemic risk posed by frequently arbitrary, severe and unquantifiable litigation," says Thorn PLC's bond manager. "Some investment bankers claim these legal hazards have become a powerful deterrent to smaller companies contemplating U.S. expansion," reports London's *Financial Times.* "Companies will pull back from a deal rather than trust the U.S. courts," says one merchant banker. Americans wind up paying the price. "The abrupt slide in Thorn bonds has prompted investors to question whether they are taking sufficient account of the risk of lawsuits when they invest in companies with exposure to litigation-mad America," reports London's *Evening Standard.* "The Thorn case may well encourage investors to demand higher coupons [interest rates] from corporations with large U.S. interests." Translation: a higher cost of capital for companies operating here, and a discouragement of investment in this country.

No word yet, though, on whether Britain or Canada will back up their outrage with threats to aim trade sanctions at us if the mega-verdicts continue, the way we successfully did with Ecuador.

The Paula Jones case, as is only too well known, has likewise served to direct the attention of some Clintonites to the problem of how easy we make it to sue nowadays in this country. A less-publicized case, which has the further merit of being a lot easier to discuss in polite company, is the burgeoning controversy dubbed Chefgate. According to a recent *Washington Times* report, the White House quietly paid $37,000 to former executive chef Pierre Chambrin after ousting him in 1994 to make way for an American cook, in exchange for his pledge to refrain "from discussions with members of the press about his resignation."

But Chambrin was later called as a witness in a lawsuit by a lower-ranking chef who is suing the White House in a discrimination case, and wound up answering questions under oath about why he had been forced out earlier. "I think the reason they didn't want me again is because, even if I [have] been an American since 1977, I didn't fit the profile of the chef of the White House because of my accent and the fact that I'm overweight," said Chambrin, testifying in what the *Times* called "broken English."

Of course federal anti-discrimination law, with the enthusiastic support of the Clinton administration, has in recent years expanded to include as protected categories both obesity and accent. Maybe the Clintonites should worry about being served confit de petard.

Contributing Editor Walter Olson (hambo @eci.com) is the author of The Excuse Factory *(The Free Press) and a senior fellow at the Manhattan Institute.*

The Quest for the Holy Rail

By Steven Hayward

Asphalt Nation: How the Automobile Took Over America and How We Can Take It Back, by Jane Holtz Kay, New York: Crown, 403 pages, $27.50

The City After the Automobile, by Moshe Safdie with Wendy Kohn, New York: New Republic/Basic Books, 187 pages, $24.00

The car is rapidly becoming the ultimate Rorschach test of political and social attitudes. Try it: Do you see the car as a means of freedom, a great democratic tool offering mobility and independence to the masses, a symbol of comfort and self-expression, an instrument capable of providing pleasure and enjoyment, a venue for romance? Or do you think of the car as essentially a rolling cigarette, complete with addictive properties and second-hand emissions that are harmful to our children? Do you think the car is a symbol of dependence instead of freedom? Do you speak disdainfully of Americans' "love affair with the car" as though it were a despicable perversion, or at least some kind of serious irrationality? Do you think *American Graffiti* should be classified as a pornographic movie? Do you think cars lead to aggression and crime (think of "road rage" and those drive-by shootings), and are responsible for despoiling the earth ("They paved paradise/ Put up a parking lot")?

The second set of attitudes now constitutes the politically correct view of cars and car culture, and if the car haters have their way, it won't be long until the "car lobby" evokes the same odious connotation as the "tobacco lobby." If you think this is a paranoid exaggeration from a Jeep-driving life member of the Auto Club, just browse practically any page of Jane Holtz Kay's *Asphalt Nation*, which is the most complete compendium of anti-car claptrap ever assembled. Perhaps we should not be surprised at the result, since Kay is the architecture critic for *The Nation*. The book would make for hilarious saloon reading—in fact, I thought perhaps the book could be a tongue-in-cheek put-on, which is what I think Click and Clack of NPR's *Car Talk* had in mind when they provided a dust jacket blurb—were it not for the fact that anti-car sentiments are becoming increasingly accepted. Not long ago I watched a grown congressman on C-SPAN calling for a tax break for commuters "who would like to *do the right thing*" and ride mass transit instead of driving to work. The premise—that driving to work is immoral—went unchallenged.

You know you're on the wrong side of the elite divide when the very first sentence of the book begins with "It took a village" —I'm not making this up—"to raise this book." "Our transportation is a tangle," Kay writes, "our lives and landscape strangled by the umbilical cord of the car." Cars are bad because they are a means of "instant gratification," which we all know is the modern American vice par excellence. "The licentious motor vehicle" allows for "unleashed consumption." The car is a "voracious icon" of "hypermobility," an agent of "spatial greed," an "accomplice" in the rise of Kentucky Fried Chicken and Taco Bell. We need to supplant the car culture, she concludes, because it would be good for our "state of being." We even get a dose of postmodern feminism in the mix. Independent mobility is a boon to women, you say? Not only is this thinking like a man, according to Kay, but "it is a false form of consciousness that fails to assess women's enslavement to the motor vehicle."

The only anti-auto cliché missing from this book is the old chestnut about the alleged 1940s conspiracy by General Motors and other auto-related companies to put L.A.'s beloved Red Cars out of business (though the demise of the Red Cars is duly lamented). But while this standard myth is absent, Kay makes up for it with several new whoppers of her own. Car vibration causes muscular and skeletal damage, for example. And those big urban riots in the 1960s that have baffled social scientists for so long? "Freeway construction" was "a major cause." Buybacks of old cars to reduce air pollution are bad—because people will buy *new* cars. Japan, she thinks, is more competitive than the United States because they pay "truthful" gas prices ($5.00 a gallon) and ride their bikes a lot more. (Apparently Kay hasn't checked on the vigor of the Japanese economy lately.) Meanwhile, Kay thinks "the car culture paved the road to 'Black Tuesday'" (i.e., the 1929 stock market crash). We even have the reductio ad Hitlerum: "Adolf Hitler's emerging autobahn had

NEIL MICHEL

From the federal Intermodal Surface Transportation Efficiency Act ("Ice Tea" to the cognoscenti) to the much in vogue "new urbanism" on the local level, the moral disapprobation of the car is becoming a central premise of politically correct public policy.

sparked America's vision for a transcontinental road." Gee, the Nazis built big highways, ergo...

At times it seems as though Kay is striving to find new extremes through which idealism can marginalize itself. Even the Progressives and FDR come in for criticism because they liked cars and roads too much. But far from being marginalized, Kay's anti-car philosophy is the intellectual underpinning of the dominant currents in transportation and urban planning policy today. From the Intermodal Surface Transportation Efficiency Act ("Ice Tea" to the cognoscenti) to the much in vogue "new urbanism" on the local level, the moral disapprobation of the car is the central premise of policy. For both Kay and Moshe Safdie in his *The City After the Automobile*, at the heart of the argument about cars is a much bigger argument about land use and urban planning. You know what's coming: a huge expansion of government power.

Cars, as Kay points out, make possible "the scum of sprawl." Safdie is less lunatic in his aversion to cars than Kay; his book is not the anti-car screed the title would suggest. An avant-garde architect (he was the principal designer for Expo '67 in Montreal), Safdie is concerned chiefly with urban form, and his thesis could be reduced to four words: Don't make things square. Safdie is right that much of the monotony of urban form arises because of rigid planning codes and, more important, lack of imagination. But both Safdie and Kay, along with many of the "new urbanists" who share their view, display an amazing inability to learn from the planning mistakes they rightly decry. If planning has made a botch of things in the past, constraining imagination and the marketplace alike, why should we embrace an even more intensive scheme of government planning?

The answer, of course, is that reformist idealism, along with faith in the ability of well-meaning people to "do better next time," is irrepressible. Combining old-fashioned reformist idealism with the anti-auto animus, we will be, to paraphrase the old millennialist slogan, "forced to be (car) free." Kay finds light rail "exhilarating" (she clearly needs to get out more, and perhaps write a stage play entitled *A Desire Named Streetcar*) and joins the chorus singing the praises of Portland, Oregon, as the model for the nation. This model calls for compelling much denser development, urban limit lines to contain urban size, and intensive use of mass transit. For mass transit, Kay rightly points out, "you need mass." Portland has established a powerful regional government to enforce the plan and has spent billions for a lightly used light rail system, while eschewing new road construction completely. Evidence from Portland suggests this model is already starting to break down (even *The Washington Post* recently ran a front-page story entitled "Cracks in Portland's Great Wall"), but the propagandists continue to portray it as the promised land.

Kay cites Jane Jacobs, who, to be sure, dislikes cars, but who dislikes ambitious planners even more. Both Kay's and Safdie's vague prescriptions call to mind Jacobs's warning that "people who get marked with the planners' hex signs are pushed about, expropriated, and uprooted much as if they were the subjects of a conquering power." Safdie, for example, ends a confused passage about central planning and the free market with this inscrutable imperative: "We must create new conditions in which a vision of the city is integrated with feedback from the city's inhabitants, and in which a central authority is vested with power to enact this vision in a manner unthreatening to individuals or communities." Whatever that means exactly, it can't be good.

If planning has made a botch of things in the past, constraining imagination and the marketplace alike, why should we embrace an even more intensive scheme of government planning?

Safdie is an innovative architect, but he should stick with designing geometrically challenged buildings. His suggestion for solving our mobility problems is truly bizarre. He thinks we should make cars a public utility. Inspired by the use of communal bicycles in Amsterdam, Safdie thinks we should give up owning our own cars and instead be able to pick up and drop off small "utility cars" (or U-cars) as we need them at depots scattered throughout cities. Think of it as Hertz and Avis in every neighborhood. Because such cars could be stored more efficiently than in typical parking lots or private homes (he has hand drawings of the spatial arrangements in the book), we would save huge amounts of space in our cities. Kay, meanwhile, is not only largely oblivious to market solutions to genuine mobility problems (such as congestion pricing and privatization), but is positively hostile to them, especially for transit systems. "[T]he quest for 'efficiency' through privatization is a menace," Kay writes.

Even though commonsensical Americans are not going to stand for being coerced out of their cars any time soon, the anti-car and urban planning nostrums of the idealists are achieving axiomatic status. People are being made to feel just a bit guilty about driving, at least by themselves or for "unnecessary" trips. Forget the Sunday drive. It is a crime against nature. As James Q. Wilson recently pointed out, if the automobile were first invented *today*, it would face insurmountable political obstacles to its introduction into the marketplace. So even though all urban areas and roads take up only about 3 percent of the land area of the continental United States, we go on acting out the mad tea party scene from Lewis Carroll's *Alice's Adventures in Wonderland*: "The table was a large one, but the three were all crowded together at one corner of it. 'No room! No room!' they cried out when they saw Alice coming. 'There's *plenty* of room!' said Alice indignantly, and she sat down in a large arm-chair at one end of the table." We go on lavishing billions of dollars on new rail transit, the urban mobility equivalent of the Maginot Line, even though transit ridership continues to decline.

It's enough to send any happy motorist into road rage. The time has come to run these plodding idealists off the road. Go ahead; gun your engine, go for a Sunday drive. It gives the phrase "drive them nuts" a whole new meaning.

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Masters of the Universe

By Kenneth Silber

Visions: How Science Will Revolutionize the 21st Century, by Michio Kaku, New York: Anchor Books/Doubleday, 403 pages, $24.95

Visions begins on a note of arrogance. Unlike previous efforts to chart the future of technology, Michio Kaku assures us, his predictions are likely to be correct. As science approaches a full understanding of the laws of nature, a scientific consensus is emerging about where technology is headed and on what timetable. This book, Kaku asserts, reflects that consensus.

Baloney. What is remarkable about many of the advanced technologies Kaku discusses—artificial intelligence, genetic engineering, nuclear fusion, electric cars—is the distinct lack of scientific unanimity about their potential. For every physicist who says that fusion is "the energy of the future," there's another who replies, "Yes—and it always will be." Even when the experts are in general agreement—as they once were about the infeasibility of cloning an adult sheep—consensus has hardly proven a guarantee of predictive accuracy.

Nonetheless, Kaku, a theoretical physicist and high-profile popularizer of science, has written an absorbing book, filled with thoughtful speculations about the 21st century and beyond. *Visions* sketches what might emerge from three 20th-century scientific upheavals: the "computer revolution," the "biomolecular revolution," and the "quantum revolution." These revolutions are interconnected, as Kaku notes; discovery of the DNA double helix, for example, relied on X-ray crystallography, a technique derived from quantum physics. Such linkages, he expects, will take on growing importance in the next century, in the form of DNA-based computers and other hybrid technologies.

Visions provides an intriguing (and explicit) rejoinder to *The End of Science*, the 1996 book in which journalist John Horgan argued that the era of scientific discovery is sputtering out in disappointment and confusion. Similar to Horgan (but unlike eminent scientists such as Roger Penrose and Freeman Dyson), Kaku believes that breakthrough insights into nature's workings, such as evolution and relativity, are now mainly things of the past. But where Horgan detected intellectual drift and technological stagnation, Kaku sees something very different: The age of discovery is giving way to the age of mastery. Having learned the universe's rules, humans are finally ready to become full-fledged players in the game.

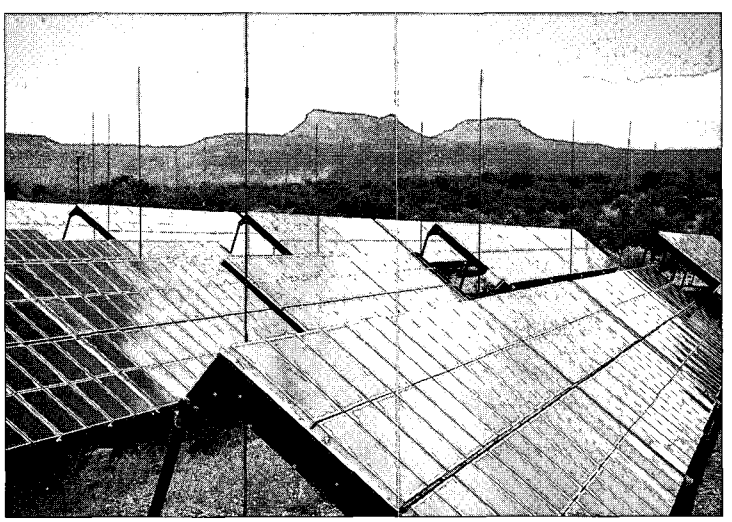
The quantum, biomolecular, and computer revolutions, in other words, are enabling us to be "choreographers of matter, life, and intelligence," no longer mere passive observers of nature's dance. Yet even while taking this expansive view of technology's potential, Kaku is adept at recognizing technological hurdles and limits.

Computing power, Kaku expects, will become increasingly cheap and ubiquitous in the next two decades, manifested in such products as wearable computers, smart cars, and digital scrap paper. Helpful (but sometimes annoying) "intelligent agents" will sort your e-mail, update your schedule, and remind you to watch your diet. But before long, Kaku notes, chip making will bump up against the physical limits of silicon, and further progress will depend on the development of holographic memory, organic processors, quantum transistors, and other exotic technologies.

After 2020, Kaku predicts, the first glimmerings of true artificial intelligence will appear, as computers acquire common sense and as the Internet evolves into something similar to the "magic mirror" that imparts wisdom in fairy tales. After 2050, robots endowed with some degree of consciousness and self-awareness may roam the earth. Might humanity eventually be enslaved or slaughtered by its robotic creations? Kaku closes his discussion of artificial intelligence with an overview of the built-in safeguards that should be devised to prevent such an outcome.

Biotechnology also will make vast strides in the early 21st century, according to Kaku. By 2020, the genetic underpinnings of many hereditary diseases will be understood, and entire classes of cancer will be curable. People will own CD-ROMs containing their own personal DNA codes. Between 2020 and 2050, genetic research will see slower progress, as scientists grapple with the intricacies of gene function and protein folding. During this period, however, it will become possible to grow new vital organs in the lab, perhaps extending the human life span by decades.

After the century's midpoint, Kaku writes, "we may be able to manipulate life itself." Yet he is impenetrably vague about what this means. More interesting is Kaku's discussion of feats that probably lie beyond biotech's reach. Performing major design changes on human beings—say, growing wings on a person's back, in Kaku's whimsical example—is un-



In *Visions*, Michio Kaku surveys the "quantum future" and its broad range of scientific and technological possibilities. Electric cars and magnetic-levitation trains are emerging as viable modes of transportation, he argues, and solar power is poised to become a leading energy source.

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likely to be feasible even in the late 21st century. Consider the obstacles involved: The genes that initiate wing formation in a bird or insect may do nothing in a human (or may activate homologous organs, such as arms); these genes would have to be altered to allow a wingspan of some 20 feet; and the human's entire genome would have to be transformed to create the lighter bones and stronger muscles required for flight.

Surveying the "quantum future," Kaku assesses a broad range of possibilities for manipulating matter and developing new sources of energy. Electric cars and magnetic-levitation trains are emerging as viable forms of transportation, he argues, and solar power is poised to become a leading energy source. Room-temperature superconductors and microscopic lasers may find numerous industrial applications. Nanotechnology's molecule-sized

In addressing the uncertainties of technological change, Michio Kaku the author might have taken some tips from Kaku the activist.

machines are of uncertain feasibility, Kaku notes, but dust-sized sensors and motors will be used widely in the coming decades. Some other staples of science fiction, such as force fields and portable ray guns, appear to be incompatible with known laws of physics, he adds.

Space technology will make steady, if unspectacular, progress in the next few decades, according to *Visions*. Kaku is dismissive of the notion of a manned mission to Mars in the early 21st century, basing his argument on exorbitant cost estimates now widely regarded as erroneous. Yet after 2020, he emphasizes, astronomical instruments may be sensitive enough to detect Earth-like planets in other solar systems. The century's latter half may see ambitious efforts to develop fusion-powered interstellar rocket ships. Antimatter engines loom as an intriguing prospect sometime beyond 2100.

Kaku's social and political asides are less imaginative than his technological

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speculations. He argues, plausibly but predictably, that the economic strength of nations in the 21st century will depend on their technological prowess. In chapters devoted to "second thoughts," he presents grim scenarios of "information ghettos" and bioengineered germ weapons; his solutions are unremarkable generalities about education and international cooperation. Some of Kaku's political pronouncements are mere clichés. Discussing the nation-state's future, he writes, "As John Lennon said in his song 'Imagine,' perhaps it's not hard to imagine a world without nations."

Might a public backlash against technology derail much of the progress forecast in this book? The history of advanced technologies in the 20th century—nuclear energy comes to mind—indicates that not everything that is technically feasible will end up receiving political and social acceptance. Certainly, the 21st century's "choreographers of matter, life, and intelligence" will face their share of protest movements and hostile regulators. *Visions*, however, has little to say about such matters.

That is unfortunate, since Kaku's own experience might have provided an interesting perspective. A longtime antinuclear activist, he was a leading figure in the 1997 protest campaign against the Cassini space probe, a plutonium-using scientific mission to Saturn. Critics of the anti-Cassini movement, including me, argued that the campaign relied on gross exaggerations of the mission's risks and that the broad opposition to "nukes in space" threatened to cripple space exploration. In addressing the uncertainties of technological change, Kaku the author might have taken some tips from Kaku the activist.

Yet even if technology follows a more unpredictable—and politically volatile—path than the one glimpsed in *Visions*, the book's strengths readily outweigh its weaknesses. Kaku's predictions are intelligent and thought-provoking, and his technological optimism never veers into an unconvincing techno-utopianism. Moreover, no one can accuse him of thinking small. Looking beyond the 21st century, Kaku sketches out a bold future of galactic colonization and more.

Drawing upon categories devised by Russian astronomer Nikolai Kardashev, Kaku sees technological civilizations advancing through several phases: Types I, II, and III. Type I refers to a global civilization, the masters of a single planet. A Type II civilization utilizes the resources of an entire solar system; such a society might even build a vast shell or "Dyson sphere" around its star. A Type III civilization operates on a galactic scale, occupying numerous solar systems. In this scheme of things, humanity is currently a backward society, or Type 0, but is on the verge of attaining Type I status.

Becoming a Type II civilization will take many centuries, according to Kaku, and achieving galactic Type III status requires many millennia. But it's worth the effort: Civilizations of Types II and III are invulnerable to asteroid impacts, supernova explosions, and other natural disasters.

Toward the book's end, Kaku launches into a discussion of wormholes, superstrings, and other exotica of modern cosmology. After billions of years, even galactic civilizations are doomed, as the universe freezes in a Big Chill or collapses in a Big Crunch. But on the book's last page a new category is introduced: the Type IV civilization, masters of space and time. Such beings might be able to build tunnels to parallel universes. Here, then, is Kaku's ultimate statement of technological optimism: Intelligent life might survive the end of our universe.

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The Man with the Plan

By Brink Lindsey

The One Best Way: Frederick Winslow Taylor and the Enigma of Efficiency, by Robert Kanigel, New York: Viking Penguin, 675 pages, $34.95

It's fashionable these days to dismiss the industrial era as a kind of Dark Ages from which, thanks to the integrated circuit, we have only just emerged. In this caricature of history, Frederick Winslow Taylor, father of "scientific management," figures as one of the chief villains. His hierarchical control systems and treatment of workers as brainless interchangeable parts stand in diametric opposition to the flattened organizations and "knowledge workers" that are touted by today's management gurus.

Of course, caricatures are based on actual (and usually unattractive) features. And Taylor makes an inviting target: Much of his influence has indeed been godawful. But the full story is much more complicated, and much more interesting. A balanced look at his life and times reveals not a villain but a tragic hero. His innovations ushered in enormous productivity gains, which brought unprecedented affluence to the United States and the nations that followed its lead; at the same time, though, Taylor's system employed methods that misunderstood, and thereby grievously undermined, the full promise of the new mass production economy. It is fair to say that Frederick Taylor's career exemplified the Industrial Revolution he helped to lead: a mixture of beneficent achievements and malign shortcomings.

Robert Kanigel's *The One Best Way: Frederick Winslow Taylor and the Enigma of Efficiency* tells Taylor's story comprehensively and fairly. The length of the book is somewhat forbidding, and in some sections excessive. Kanigel clearly immersed himself in his subject, and at times he is too eager to make sure we know it. Despite the page count, the book is highly readable and on the whole richly rewards the reader's investment of time. If you want to understand the history of American political economy during the 20th century, you really need to know about Frederick Taylor; he is, for good and ill, one of our founding fathers.

Frederick Winslow Taylor was born in 1856 to a wealthy Philadelphia Quaker family. Until the age of 18, he appeared destined to follow in his father's footsteps as a gentleman of leisure, dividing time

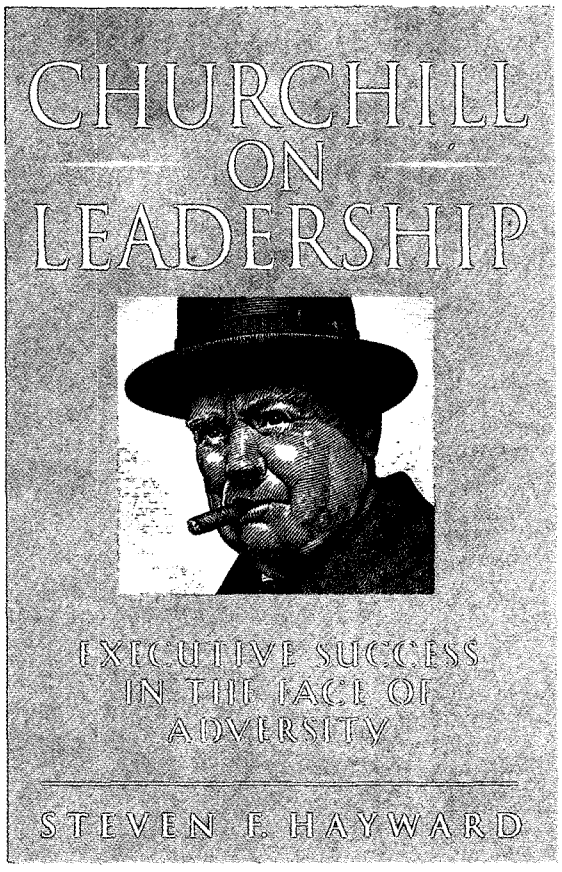
between philanthropic projects and managing inherited wealth. Toward this end Taylor had prepped at the elite Phillips Exeter Academy, receiving a traditional classical education, and was poised to enter Harvard. At this point, though, his life took a sharp and unexpected turn: For reasons that remain obscure, he decided to forsake Harvard for a career in industry. In 1874, the training he needed generally wasn't taught in universities; instead, Taylor signed on as an apprentice at a small Philadelphia pump works.

Four years later, his apprenticeship complete, he got a job as a laborer in the machine shop of Midvale Steel. He spent 12 years there, rising quickly through the ranks, first to foreman and ultimately to chief engineer. (In his spare time, it should be mentioned, he and his partner won a doubles title at the U.S. Open Tennis Championship.) At Midvale, he developed and put into place the basic elements of what later came to be known as "scientific management": the breakdown of work tasks into constituent elements; the timing of each element based on repeated stopwatch studies; the fixing of piece rate compensation based on those studies; standardization of work tasks on detailed instruction cards; and generally, the systematic consolidation of the shop floor's brain work in a "planning department."

From Midvale, Taylor went on to become one of the world's first management consultants, his business card proclaiming, "Systematizing Shop Management and Manufacturing Costs a Specialty." Around the turn of the century, Taylor did his last prolonged stint as a corporate employee, spending three years with Bethlehem Iron (later Steel). At Bethlehem, Taylor recorded two great achievements: first, the development with a colleague of a new "high speed" tool steel, a material that allowed machine tools to cut metal at three to four times the previous speeds; and second, the systematization of years of metal-cutting experiments into a special slide rule for calculating machine speed and feed. Both were landmark engineering breakthroughs; putting aside Taylor's management theories, they would have sufficed to make him an important figure in the history of American industrialization.

But Taylor was to become known as much more than an engineer. After leaving Bethlehem—being forced out, more accurately—he more or less retired from day-to-day work. He became instead an evangelist for his management ideas, offering private seminars to corporate leaders from his Philadelphia home. Worldwide fame came in 1910 as a result of a railroad rate increase dispute before the Interstate Commerce Commission. Crusading lawyer (and later Supreme Court Justice) Louis Brandeis, who represented interests opposed to the rate increase, based his argument on Taylor's management system, which he dubbed "scientific management." Brandeis claimed that if the railroads adopted Taylor's methods, they could save a million dollars a day: They didn't need a rate increase; they needed greater efficiency.

Taylor became an instant celebrity. Controversy, though, wasn't far behind.



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Labor leaders and others denounced "Taylorism" as oppressive and antidemocratic, and a strike at the Watertown Arsenal over the adoption of scientific management led to heated congressional hearings. Bruised by the conflict, Taylor soon withdrew from public life, letting his growing number of disciples carry the battle for "the one best way," a catch-phrase of the movement he launched. He died in 1915.

Taylor's shop management system was adopted in something close to full form in only a few companies; the general thrust of his views, though, permeated American and world industrial society. His writings were translated into dozens of foreign languages. Taylor Societies sprang up everywhere. Along with Henry Ford, he became a personification of American efficiency and industrial might. Even the communists became Taylorites: In 1918 Lenin gave a speech in which he declared, "We must introduce in Russia the study and teaching of the Taylor system and its systematic trial and adaptation."

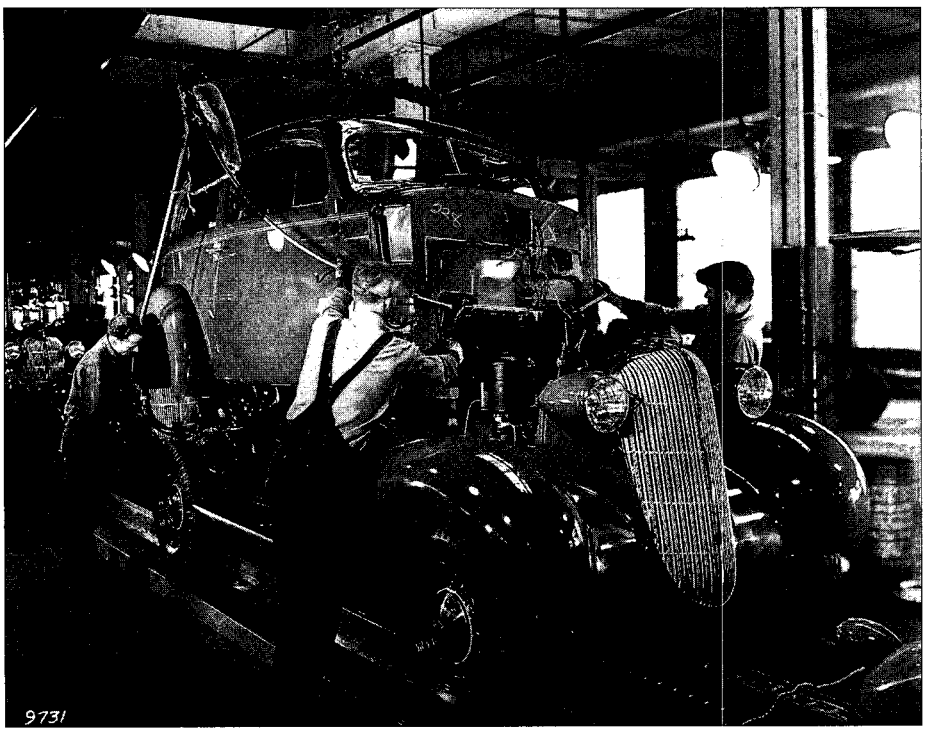
Before discussing the pros and cons of Taylor's system, it is necessary to grasp the problems it was addressing. The factory floor that Taylor came to at Midvale was typical of its day but a completely alien place from our contemporary perspective. Factory work was done according to the craft system; jobs were "trades," and their secrets and rules of thumb were passed down, slowly and grudgingly, from master to apprentice. The owners and operators of the business really had no idea how their work should be done. They didn't know how tasks were best arranged, they didn't know how to optimize the output of the machines, and they didn't know what pace of output was sustainable. They supplied the workplace and the tools, and through the foremen and shop bosses they prodded their workers, often brutally, to do more faster. Ultimately, though, when the workers told them there wasn't a better or faster way, they lacked the knowledge to prove otherwise.

Workers jealously guarded their shop floor secrets from management because of a fundamental conflict of interest. Compensation generally took the form of piece rates rather than daily or hourly wages, and piece rates were set based on expected output. If managers discovered that work could be done faster or machines could be operated more efficiently, piece rates tended to be reduced (at least in the short run). So a worker's attempt to earn more money by increasing his own output was generally self-defeating: The piece rate would be reduced, and then he and everybody else would have to run harder just to stay in place. This state of affairs encouraged systematic "soldiering"—the deliberate slowdown of work output. (The expression originated as a nautical term, having to do with the laziness of ground troops when they were transported by ship.) Workers who didn't toe the line could expect ostracism if not physical abuse.

Thus, the early industrial factory mixed the dynamism of amazing new technologies with the backwardness of the medieval guild. Capital and labor were separated by a fault line of unresolvable, zero-sum conflict: Management knew it was being cheated but couldn't prove it, while workers knew that management was trying to cheat them. Frederick Taylor lived this conflict as an apprentice, banged his head against it as a foreman, and then resolved to do something about it.

Taylor recognized that knowledge is power. Management had to understand what was happening on the factory floor. Thus, the starting point of scientific management, according to Taylor, was "the deliberate gathering in on the part of those on the management's side of all of the great mass of traditional knowledge, which in the past has been in the heads of the workmen, and in the physical skill and knack of the workmen, which he has acquired through years of experience." Through his notorious time studies and his less well-known metal-cutting experiments, Taylor allowed those who ran the business to pierce the veil of shop practice secrecy.

Taylor wanted more than raw data, though. He wanted to systematize the knowledge that was gained, to replace habit and rules of thumb with precise and usually quantitative analysis. He was convinced that scientific study would reveal a better way—the one best way—of doing things. No task was too mundane for scrutiny. In one celebrated example, Taylor conducted extensive experiments to determine the optimal size of a shovelful of dirt to maximize the total amount shoveled in a day. "In the past the man was first," Tay-



Frederick Taylor strove to systematize knowledge of the factory floor, to replace habits and rules of thumb with usually quantitative analysis. He was convinced that scientific study would reveal a better way—"the one best way"—of doing things.

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lor said in a famous line, "in the future the system must be first."

To implement the gathering and analysis of all this previously hidden knowledge, Taylor envisioned new kinds of managers who prepared the detailed instruction cards, planned the use of and set the machinery, and generally coordinated who did what, when, and in what order. Taylor bucked the traditional perception of white-collar workers as "nonproductive" by redefining their jobs. Under Taylor's system, shop bosses were no longer browbeaters; they were knowledge workers.

Once management gained control of the production process by consolidating and systematizing information about it, Taylor believed the stage was set for solution of the "labor problem"—the zero-sum conflict between capital and labor

Taylor's ruthless top-downism became the norm in American industry, and its effect has been nothing short of disastrous. Taylor's utopian solution became instead a Faustian bargain: We'll bribe you to check your brains at the factory gate.

over compensation. First of all, the question of how much work could be done would no longer be resolved by a test of wills; it would be resolved by "science," in the form of time studies. Next, differential piece rates would be established so that workers would receive a substantial pay increase if they met management's output targets; furthermore, there would be a strict ban on rolling back piece rates after they had been set "scientifically."

Through achieving substantial gains in productivity and sharing those gains with the workers, Taylor envisioned a way out of the traditional impasse: "The great revolution that takes place in the mental attitude of the two parties under scientific management is that both sides take their eyes off the division of the surplus as the all-important matter, and together turn their attention toward increasing the size of the surplus until this surplus becomes so large that it is unnecessary to quarrel

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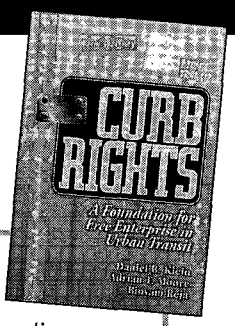

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over how it shall be divided." Under scientific management, the old zero-sum rancor would give way to positive-sum mutuality of interest.

So far, so good for Taylor's system. By breaking down the old craft system and subjecting shop practices to rigorous analytical scrutiny, scientific management allowed the incentive-creating signals of the marketplace to penetrate—for the first time—all the way to the factory floor. It is not saying too much to conclude that Taylor opened up a new world for the capitalist discovery process to explore.

And although Taylor's hope that labor-management conflict would disappear proved utopian, the truth is that he only exaggerated his case rather than misstating it. The productivity gains that scientific management and its offspring created did spur rising living standards, and this generalized affluence did in time, if not eliminate class conflict, at least quench its revolutionary combustibility. Once "working class" people owned their own homes with washer/dryers and color TVs and two cars in the driveway, the "labor problem" as a threat to social peace had indeed been solved. Taylor had the vision to prophesy that outcome, and the genius and tenacity to help it come true.

Notwithstanding its considerable virtues, Taylor's system was marred with terrible flaws. While grasping that systematic knowledge gathering was the key to industrial development, Taylor then insisted on imposing needless and perverse limits on that process. He tended to see knowledge work as a finite task, rather than a continuous and never-ending process; moreover, he treated it as the exclusive preserve of an elite few, rather than something that should be diffused as broadly as possible.

The whole notion of "the one best way" betrays a crabbed and static conception of management. In this view, optimal practices are deterministic and stable over time; once they are discovered, all that remains is routine implementation. Needless to say, this approach looks hopelessly retrograde from our Information Age perspective. For helping to build a corporate culture in which standard operating procedures were holy writ and the "not invented here" syndrome reigned supreme, Taylor deserves the opprobrium that is heaped upon him by today's "creative destruction" enthusiasts.

Even worse, Taylor's belief in a rigid separation between planning and doing was antithetical to the integration of the workplace and marketplace that scientific management sought to achieve. There is no mistaking Taylor's views on this subject; he had no use for workers from the neck up. "In our scheme, we do not ask for the initiative of our men," he said. "We do not want any initiative. All we want of them is to obey the orders we give them, do what we say, and do it quick."

This ruthless top-downism became the norm in American industry, and its effect has been nothing short of disastrous. Taylor's utopian solution became instead a Faustian bargain: We'll bribe you to check your brains at the factory gate. As a result, productivity has been hobbled by cutting off management from all of the potentially useful information that resides in the heads of workers; furthermore, generations of workers have been alienated by a system that treats them as inanimate objects. We are only now beginning to overcome the serious dysfunctions caused by this bargain. Much of the dislocation and pain caused by corporate restructurings over the past decade can be laid at the feet of Frederick Taylor.

And in the broader view, Taylor's misplaced confidence in know-it-all technocrats is of a piece with the great collectivist tragedies of this century. It's not surprising that Lenin was a Taylorite, or that Yevgeni Zamyatin's dystopian *We* identified Taylor as the chief prophet of its imagined future totalitarian state.

In both his virtues and his flaws, Frederick Taylor was a man of his era. The Industrial Revolution was a time of both prodigious creativity and profound misunderstanding. A new world based on competition and diffused brainpower was being constructed, but its leading builders saw instead a brave new world of all-controlling technocrats. For his part, Taylor did much to unleash creativity, but also to stifle and misdirect it. For better and for worse, in our liberating affluence and our strangling bureaucracy, we are inheritors of Taylor's hopeful, troubled legacy. ◆

Contributing Editor Brink Lindsey (102134.2224@compuserve.com) practices trade law in Washington, D.C.

Organizing Principals

By Richard C. Seder

The Teacher Unions: How the NEA and the AFT Sabotage Reform and Hold Parents, Students, Teachers, and Taxpayers Hostage to Bureaucracy, by Myron Lieberman, New York: The Free Press, 305 pages, $25.00

February 1997 ended an era in education. Albert Shanker, 20-year president of the American Federation of Teachers (AFT), passed away after a long fight with cancer. He began as a teacher in the early 1950s and quickly became aware of the deplorable professional status of his colleagues. Poor working conditions, minuscule pay, lack of trust by administrators, random hiring and firing without due process, and length of teachers' work weeks were his main concerns.

Inspired by the experiences of his family with unions in the garment industry, Shanker joined the local teachers guild and within a couple of years quit teaching to become a full-time representative of the guild. After merging with the neighboring United Federation of Teachers in 1960, the AFT fought for collective bargaining rights, a standardized pay schedule with incremental promotions, better working conditions and work hours, and direct union dues deductions from paychecks—all typical of the union demands of that era. And to back up those demands, the AFT was unafraid to use the mother of all labor union tactics, the strike. Shanker won the nation's first collective bargaining agreement and was jailed twice for leading violence-riddled strikes in New York City.

Thus began the transformation of

teachers unions from professional teacher organizations such as the National Education Association (NEA) to the more traditional, industrial-style union model. After much internal debate and conflict, the NEA soon followed the AFT's lead by adopting the same tactics. Through their combined efforts, the NEA and AFT, with a combined current membership of over 3 million, made public school teaching the nation's most unionized occupation.

And who would argue against the motives for the two unions' actions? The unions, through the leadership of Shanker, raised pay dramatically, improved teachers' hours and the conditions in which they worked, and obtained due process in hiring and firing.

But Shanker himself realized early on that the influence and tactics of the teachers unions as traditional labor organizations would eventually bring down the quality and status of public education. And it is the influence and tactics of the teachers unions on which Myron Lieberman focuses in *The Teacher Unions: How the NEA and the AFT Sabotage Reform and Hold Parents, Students, Teachers, and Taxpayers Hostage to Bureaucracy.*

Lieberman, chairman of the Education Policy Institute in Washington, D.C., provides an insider's view of what may be the most powerful forces in public education today: the NEA and the AFT. His experience as a longtime union activist, collective bargainer, member of the NEA, and former candidate for president of the AFT offers a unique view of the inside workings of the unions, one denied to many lay observers. He provides information on how the unions came to be, their evolution over time, and their agendas and activities.

Most important, though, Lieberman concentrates on how these organizations stand in the way of effective change in public schooling. He scrupulously details the effects collective bargaining has had on administrators and school boards. Because many union contracts meticulously spell out do's and don't's in the everyday functioning of the school, writes Lieberman, "the inevitable tendency is to consult the contract before taking action, a mindset that leads inexorably to union control." And where there is ambiguity in the contract, "principals often defer to the [union]

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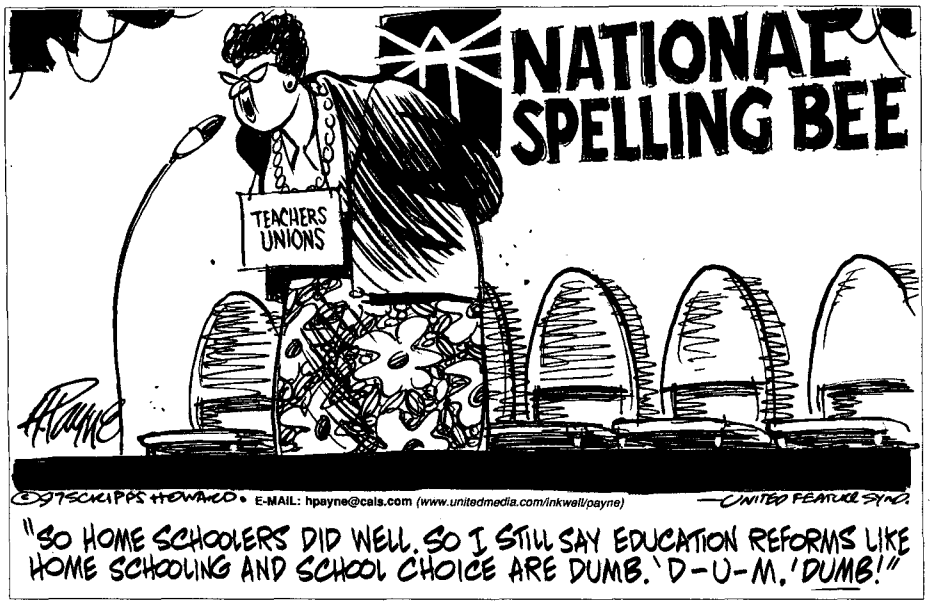
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representatives even when they would not be contractually required to do so." This helps explain why so few principals seem able (or perhaps even willing) to provide leadership and guidance when their schools are in trouble.

Union influence does not stop with the school board and administration. Consider the interactions between unions and the National Congress of Parents and Teachers, more popularly known as the PTA. Most outsiders view the PTA as a bake-sale sponsoring, fund-raising organization that primarily represents the interests of parents. Yet, notes Lieberman, "the PTA's legislative representative in Washington, D.C. could not cite a single instance of PTA disagreement with the NEA." And at its 1994 California state convention, "the PTA took credit for defeating Proposition 174," California's school voucher initiative, and "proudly asserted that the teacher unions provided the dollars, but the PTA provided the bodies that defeated the initiative." How could a group that claims to represent parents take such a stand?

Indeed, the national PTA has set guidelines to follow during teacher strikes. If PTA members, whether teachers or parents, fill in for striking teachers in the classroom, they are considered strike breakers. And if the PTA is asked to support either the school district administrators, the elected school board members, or the union in a contract dispute, the PTA is not permitted to officially support the district. By threatening to withdraw its members from the PTA if its positions are opposed, the NEA effectively controls the organized voice of parents and will continue to use the PTA to further its own agenda. By its actions and inactions, the PTA is covertly involved in both bargaining and policy making.

Lieberman dedicates a fascinating chapter to Al Shanker's skills as a political operator. Conservative opponents of the teachers unions often found themselves praising or even defending Shanker and the AFT. Shanker accomplished this by embracing certain "conservative" issues, such as "back to basics" curricular changes, implementing and raising standards for graduation and promotion, and public school choice, while denouncing the NEA's positions. But these were areas that had no impact on his union's power or its privileges.

So successful was this strategy that Shanker was applauded by Ronald Reagan, who spoke at the 1983 AFT national conference. By turning negative attention away from himself and his union, Shanker successfully demonized the NEA as the obstacle to change and portrayed the AFT as the champion of successful, reform-minded schools. By paying attention to Shanker's actions rather than his rhetoric, Lieberman unmasks him as a wolf in sheep's clothing.

For instance, the AFT officially considers privatization of the provision of school services "a violation of democratic principles since it places in the hands of private

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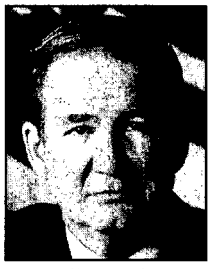

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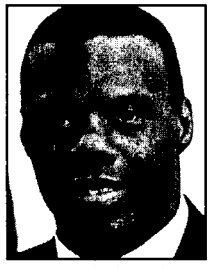

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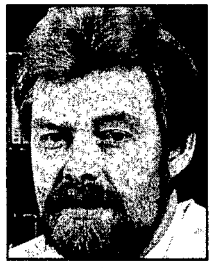

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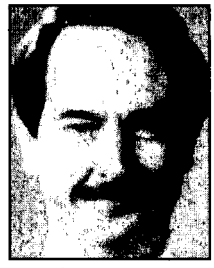

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industry the responsibility the public has entrusted to its public officials thereby lessening the degree to which voters can hold these officials accountable for the proper administration of public services. Therefore, we are committed to keeping school services in the public sector by fighting efforts toward privatization." This pertains not solely to educational services but to all school operations, including cafeterias, busing and other transportation, and custodial services.

The NEA publication "Contracting Out" outlines how employees can sabotage operations when school districts contract services to private providers. In Hartford, Connecticut, for instance, the school district arranged to have its operations run by the private management company Education Alternatives Inc. Yet EAI had to employ union teachers and had to follow all previous collective bargaining agreements to the letter while facing continuous, hostile advertising and propaganda campaigns funded by the unions.

Under the circumstances, it's no surprise EAI could not operate profitably and its contract was terminated. Lieberman says an important lesson was learned: "[I]t is much easier to terminate an independent contractor than highly paid, but unsatisfactory, tenured teachers protected by a union willing to engage in sabotage if need be." He then notes that less than a year after EAI lost its contract, the state of Connecticut took over the Hartford district.

Despite all the controversial stands and policies the two major teachers unions have taken, do they effectively represent teachers? Lieberman repeatedly argues that teachers are not getting their money's worth. Teachers with skills that are in high demand—such as those who teach math and science—must accept the one-size-fits-all salary schedule negotiated by the union. Many find better opportunities outside of teaching, which causes a shortage in the areas where the most skills are needed. And the unions refuse to allow merit pay for the best teachers, arguing that high salaries for a few teachers would necessarily lead to low salaries for most. If this is the case, are the unions conceding that most teachers could not reach some modest, objectively determined goals in order to receive higher salaries? If so, why are they still in the classroom?

The teachers unions' influence in education policy is pervasive. That this control is obtained through political means is often overlooked, but not by Lieberman: "The fact that negotiations exclude other parties in interest does not transform political activity into nonpolitical activity; it only means that we have a political process from which various parties in interest are excluded." By controlling the process, the unions control the pace of change while dictating what those changes will be, whether or not they are in the interest of the teachers they represent.

Lieberman's criticisms of charter schools, however, are less convincing. He argues that the unions—which will be inextricably involved in the process of designing charter-school legislation—will make sure any new schools aren't much different than the ones they replace. Perhaps. But by calling it "wishful thinking to assume that hordes of teachers chafing under bureaucratic restrictions are eager to teach in charter schools, or that large numbers of entrepreneurial teachers are awaiting opportunities to demonstrate how schools should be run," Lieberman ignores the more than 700 charter schools already operating, almost all of which are less than five years old. He fails to distinguish between union activists and education scholars who are wedded to the status quo and classroom teachers who have shown they're willing and able to meet the needs of students abandoned by the public school establishment.

Albert Shanker's legacy has been clouded by his passing. He was eulogized as the union leader who pushed for reform, urging his organization to concentrate on issues other than wages, work conditions, and tenure, such as improved teacher training, higher academic standards, and more innovative school structures. At the same time, the machine that Shanker developed, the hard-nosed, industrial-style labor union, resists systemic change. Through control comes power, and that is what Shanker made sure the teachers unions had.

Richard C. Seder (rseder@earthlink.net) is director of education policy studies at the Reason Public Policy Institute.

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Selling out—constructively

By Thomas W. Hazlett

Didn't Bill Clinton rail against George Bush in Campaign '92 for "coddling Chinese dictators"? Or is that memory just some sort of collective national delusion?

Unfazed—or perhaps encouraged—by the mysterious appearance of shady characters with access to the Chinese government *and* millions of dollars, Clinton has opted to welcome "President" Jiang with open arms. An official state visit, the first head-to-head summit since 1985, the rolling of the red carpet—all for the regime that Candidate Clinton trashed President Bush for insufficiently isolating in the wake of Tiananmen Square.

Indeed, the current administration is actively pursuing trade normalization with the Chinese, the very issue that drove Clinton's attack on Bush-Quayle (and apparently motivated the Chinese money launderers in their Democratic largess in Campaign '96). In response to protests that such policies constitute a sellout of human dignity, the administration calmly sends forth Secretary of State Madeleine Albright to intone that we are still 100 percent committed to promoting human rights in China. And that the most effective way to do that is to work *with* the Chinese government, not *against* them.

This, too, we've all heard before—and not just from Bill Clinton, who has stumbled on to the right China policy. In this, he follows in the footsteps of Ronald Reagan, who embraced what was called "constructive engagement." It was his administration's rationale for opposing economic sanctions in the global effort to isolate South Africa.

While Reagan never had the temerity to invite South Africa's chief of state to the White House for a happy-hour buffet, constructive engagement was roundly denounced by learned Americans as a sad reminder of their leader's lack of commitment to civil rights. Some went a bit further, of course, denouncing Reagan as a "racist" (to use Nobel Peace Prize winner Bishop Desmond Tutu's term).

Even those who analyzed the struggle over apartheid as a particularly striking example of a more-generalized political competition risked the charge of moral turpitude, as the great journalist-historian Paul Johnson found when *The New Republic* savagely caricatured him as an apologist for white supremacy. Johnson had suggested in a 1985 *Commentary* article that the apartheidists were another of Africa's tribes that had successfully used the state to suppress rival populations, much as victors in other ethnic dictatorships. Such reasoning was adjudged insufficiently hard on apartheid as diabolically *sui generis*, and Johnson became suspected of high crimes against humanity.

Eventually, the Reagan administration levied economic sanctions against South Africa in September 1985 (with Congress following suit a year later). The result was nothing—at best. In the wake of sanctions, the South African stock market soared as local investors picked up "fire sale" bargains. The pro-apartheid National Party gained political momentum it had lost years before, largely due to the intense "rally 'round the flag" boost that all sanctioned pariah governments—from South Africa to Iraq—tend to enjoy.

Reform in South Africa had to wait out a sanctions-era political retrenchment, including the imposition of martial law in 1985 and a 1987 increase in electoral power for the National Party. Liberalization was ultimately ushered in not by sanctions but by the collapse of communism, which eliminated the possibility of a radical left in South Africa.

University of Sussex economist Merle Lipton, author of the seminal *Capitalism and Apartheid*, wrote a superb study of this process in 1990. But the group that commissioned the study, the pro-sanctions Investors Responsibility Research Center, suppressed it after she reached the wrong conclusions.

Our country's long-running Cuba sanctions tell the same tale, that isolation breeds contempt, not reform. Isn't it painfully obvious that Copa Communism is held up by the thinnest of threads—the American boycott? Wouldn't a herd of American tourists to Havana simply crush El Presidente Castro in a shopping mall stampede?

But the politics of the Cuba sanctions require American congressmen to have the *cojones* to heroically pursue pointless policies with counter-counter-revolutionary results. (For fans of symmetry, it's simply elegant that those who tend to be "soft on communism" in Cuba were precisely those who tended to be so outraged by "apologists for apartheid," and vice versa.)

The truth about sanctions is that they are typically one big geopolitical belly flop: A big splash and some self-inflicted pain. What's more, it's water sport to think that we must like those we buy from or sell to (do you check your grocer for political correctness, or do you examine her peaches?), or that we win hearts and minds by ham-handed attempts to solve long-standing battles in far-off locales. Those who argue for boycotting bad boys strike a righteous public pose—often at the cost of undermining progressive forces for genuine changes.

China's dictatorship will corrode with the drip of free trade water torture far faster than by ill-fated attempts at isolation. (Those who order tanks to run over dissidents don't embarass all that easily.) I have little doubt that Bill Clinton has seen the light for all the wrong reasons. But that's the beauty of economic self-interest: It shines even on those who stumble in moral darkness.

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu) teaches economics and public policy at the University of California at Davis.

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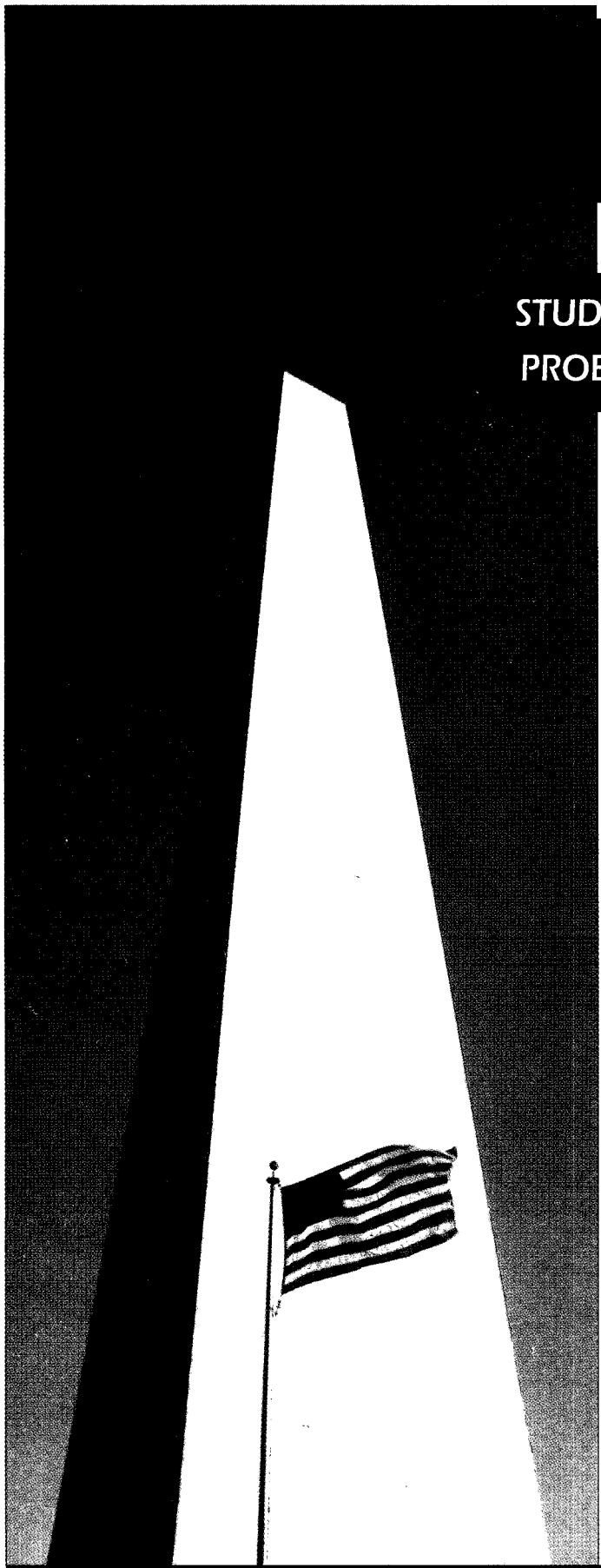

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